

1 A F T E R N O O N S E S S I O N

2 (Whereupon the afternoon
3 proceedings were
4 stenographically reported
5 by Cheryl A. Davis.)

6 EXAMINER JONES: Back on the record.

7 I believe we're ready for the next
8 witness, that being an IIEC witness. Is that
9 correct, Mr. Robertson?

10 MR. ROBERTSON: Yes, sir.

11 EXAMINER JONES: Please stand and raise your
12 right hand to be sworn.

13 (Whereupon the witness was
14 sworn by Examiner Jones.)

15 EXAMINER JONES: Thank you.

16 LINDA E. BOWYER
17 called as a witness on behalf of the Illinois
18 Industrial Energy Consumers, having been first duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ROBERTSON:

22 Q. Dr. Bowyer, would you identify yourself

1 for the record, please?

2 THE WITNESS:

3 A. Linda Elizabeth Bowyer, B-O-W-Y-E-R.

4 Q. And are you here to testify on behalf of
5 a group of intervenors who call themselves the
6 Illinois Industrial Energy Consumers?

7 A. Yes, I am.

8 Q. And I show you now a document entitled
9 Redacted Direct Testimony of Linda E. Bowyer on
10 Behalf of the Illinois Industrial Energy Consumers
11 dated August 2000 with a notation Note: This Version
12 of the Testimony Excludes Information Deemed by ComEd
13 as CONFIDENTIAL. It has been previously marked by
14 the Reporter as IIEC Exhibit 1. Are you famili ar
15 with that document?

16 A. Yes, I am.

17 Q. Was it prepared under your supervision
18 and at your direction?

19 A. Yes.

20 Q. It contains 13 pages of questions and
21 answers?

22 A. Yes.

1 Q. If I were to ask you the questions -- or
2 first of all, do you have any changes or corrections
3 to those questions and answers?

4 A. Yes, I do. On page 4, line 12, in
5 between "as" and "the" it should say "part of" , so
6 that line 12 should read "the unregulated nature of
7 the Internet-based markets being used as part of
8 the..."

9 Q. Any other corrections or changes?

10 A. No.

11 Q. If I were to ask you the questions
12 contained in IIEC Cross Exhibit -- I'm sorry -- IIEC
13 Exhibit 1, would your answers be the same as
14 contained therein?

15 A. Yes.

16 Q. Is the information contained therein true
17 and correct to the best of your information and
18 belief?

19 A. Yes.

20 Q. Now IIEC Exhibit 1 also contains a
21 Schedule 1 which is your resume. Is that correct?

22 A. Yes.

1 Q. Now I show you a copy of a document
2 entitled Unredacted Direct Testimony of Linda E.
3 Bowyer on Behalf of the Illinois Industrial Energy
4 Consumers dated August 2000 with a notation Note:
5 This Version of the Testimony Includes Information
6 Deemed by ComEd as CONFIDENTIAL. Do you have that
7 document?

8 A. Yes.

9 Q. And that document contains 13 pages of
10 questions and answers also. Is that correct?

11 A. Yes.

12 Q. And it also contains an Attachment 1
13 being
14 your resume.

15 A. Yes.

16 Q. Was the document prepared under your
17 supervision and at your direction?

18 A. Yes.

19 Q. Does this document require any changes or
20 modifications?

21 A. Yes. The same change and modification on
22 page 4, line 12, the insertion of "part of" in

1 between "as" and "the". It's the same statement.

2 Q. Now if I were to ask you the questions
3 contained in IIEC Exhibit 1P, would your answers be
4 the same as contained therein?

5 A. Yes.

6 MR. ROBERTSON: I would move the admission of
7 IIEC Exhibit 1 and IIEC Exhibit 1P and tender the
8 witness for cross-examination.

9 EXAMINER JONES: Are there any objections to
10 the admission of those two exhibits? If there are
11 not, let the record show that IIEC Exhibit 1 and IIEC
12 Exhibit 1 Proprietary are hereby admitted into
13 evidence.

14 (Whereupon IIEC Exhibit 1 and IIEC
15 Exhibit 1 Proprietary were received
16 into evidence.)

17 I think at least three parties had some
18 cross-examination questions for this witness. It
19 looks like maybe ComEd has the most. Do you want to
20 lead off?

21 MR. FINDLAY: Sure.

22 EXAMINER JONES: All right.

1 MR. FINDLAY: Welcome back to Illinois,
2 Ms. Bowyer. I'm Cam Findlay from Commonwealth Edison
3 Company.

4 CROSS EXAMINATION

5 BY MR. FINDLAY:

6 Q. I'd first like you to take a look at your
7 CV which is attached --

8 A. Uh-huh.

9 Q. -- to the end of your testimony as
10 Schedule 1.

11 A. Correct.

12 Q. It's correct, isn't it, that on pages 2
13 to 7 of your CV you list a number of articles,
14 proceedings, grants, so on and so forth?

15 A. Correct.

16 Q. By my count, it's 1 monograph, 11
17 articles, 7 proceedings, 5 non-refereed papers, 22
18 presentations, 15 grant activities, and 24 seminars.
19 Does that sound about right?

20 A. Yeah. That was a nice summary I guess,
21 yeah. It's close enough.

22 Q. It's quite a list. And that, by my

1 count, comes out to about 80 or 90 total publications
2 or so. Does that sound right?

3 A. It sounds reasonable.

4 Q. Now correct me if I'm wrong, but not one
5 of those 80 to 90 publications deals with the market
6 for electric power specifically. Is that correct?

7 A. That's correct.

8 Q. And, in fact, not one of those 80 to 90
9 publications deals even with energy markets
10 specifically. Is that correct?

11 A. That's correct.

12 Q. In fact, is it fair to say that you had
13 never studied or analyzed markets for electricity
14 until you prepared your testimony for the proceeding
15 of this sort last year?

16 A. That's not entirely true. I taught a
17 course on futures and options markets. One of my
18 areas is what we call speculative markets. I worked
19 with a student who was involved and interested in the
20 examination before the advent of the NYMEX markets on
21 whether it was possible to have forward or futures
22 markets in electric power. This was about ten years,

1 ten, twelve years ago, so we did some looking and
2 some reading into that, he and I did, the student
3 did, because he was interested in doing a paper on
4 it. So the answer to your question is no, I was
5 involved and did some reading on this prior to that.

6 Q. Well, let me be very precise then. With
7 the exception of supervising this student for a
8 paper, you've not yourself done any study or analysis
9 of electric markets prior to working for IIEC a year
10 ago.

11 A. That's correct.

12 Q. And did the student actually complete a
13 paper?

14 A. He did complete a paper for my class.

15 Q. On that topic?

16 A. On that topic.

17 Q. All right. You list on your CV your
18 major area of emphasis as, and I'll quote, "women and
19 minority business ownership, financial institution
20 risk management, market efficiency." Is that
21 correct?

22 A. That's under my research interests, yes.

1 Q. Have you ever taught a course on the
2 electric industry?

3 A. No.

4 Q. Ever taught a course on the energy
5 industry?

6 A. No.

7 Q. Have you ever worked for an electric
8 utility?

9 A. No.

10 Q. Have you ever --

11 A. I had to think about that.

12 Q. -- traded any sort of energy product
13 yourself?

14 A. Would you define energy product?

15 Q. Well, let's just say electricity.

16 A. No.

17 Q. Have you ever traded oil?

18 A. My husband and I do occasionally trade in
19 the futures markets, and I believe my husband has
20 taken positions in heating oil, natural gas, as a
21 futures transaction as a speculator, and my name is
22 on that account, so I guess that would mean yes.

1 Q. But have you personally been on the phone
2 yourself trading any sort of energy product?

3 A. You mean trading with a broker where I
4 initiated the call? My husband does no trading
5 without my knowledge and consent, so in that sense I
6 am involved, so I know what he's doing. I don't
7 believe I've ever made the phone call, no.

8 Q. All right. Now have you ever done
9 consulting work in the electricity industry with the
10 exception of the work you did for IIEC last year and
11 then again this year?

12 A. Yes, indirectly. My father, Dr. John
13 Bowyer, did work for the IIEC for many, many years as
14 a cost of capital expert witness, and occasionally I
15 would assist him in matters of research and
16 preparation of his testimony.

17 Q. And was that your entree to IIEC, that
18 you had met them through your father?

19 A. Yes.

20 Q. But it is fair to say that the '99
21 proceeding on ComEd's market value alternative was
22 the first time you had ever written anything yourself

1 on the electricity industry.

2 A. Yeah, I would say that's been submitted
3 into the record. I obviously wrote things for my
4 father and assisted him, but my name was not directly
5 on them.

6 Q. All right. I'd like -- do you have your
7 -- IIEC's responses to data requests up there with
8 you? If you don't, I think I have an extra copy I
9 can lend to you.

10 A. I think I do. Yes, I do.

11 Q. Would you take a look, please, at IIEC's
12 original response to Request Number 1 of IP's First
13 Data Requests?

14 A. I don't -- I'm sorry. I thought you
15 meant your data requests. You meant the IP ones or
16 Commonwealth Edison's?

17 Q. Let me just double-check as to where I'm
18 looking, but I believe it was --

19 A. I don't have the IP ones. I have yours.

20 Q. All right. Forgive me for one moment.

21 Let me see what I've got here.

22 Sorry about that. It would be IP's first

1 set of data requests. Ah, here we go.

2 A. No, I don't have those with me up here.

3 Q. I can let you borrow this one.

4 A. That would be fine.

5 Q. And I can ask my question.

6 May I approach the witness?

7 EXAMINER JONES: Yes.

8 Q. I think that's the one, and I've got it

9 tabbed for you even.

10 A. Okay. Well, thank you. Okay.

11 Q. All right. Now, IP asked you or asked

12 IIEC --

13 EXAMINER JONES: Could we have some

14 identification of what that is?

15 MR. FINDLAY: I'm sorry. This was IIEC's

16 response to Request Number 1 of Illinois Power's

17 First Data Requests.

18 A. Correct.

19 Q. And IP asked IIEC whether any IIEC

20 entities or their affiliates are power marketers. Is

21 that correct?

22 A. Correct.

1 Q. And the response is that witness Bowyer

2 --

3 MR. ROBERTSON: I'm going to -- go ahead.

4 Finish your question.

5 Q. Witness Bowyer does not know whether any
6 IIEC members or affiliates are power marketers. Is
7 that correct?

8 A. Correct.

9 Q. So that was correct at the time it was
10 written I take it.

11 A. Yes.

12 Q. So before you wrote your testimony and
13 opined about Altrade and Bloomberg, you had not
14 checked with any of your clients as to whether they
15 were actually participants in this market, had you?

16 A. No.

17 Q. Now sitting here today, I believe that
18 you've submitted a revised response to this request?

19 MR. ROBERTSON: She didn't submit the revised
20 response.

21 Q. IIEC has submitted a revised response.
22 Correct?

1 A. I have no knowledge of that.

2 Q. But are you aware that an affiliate of
3 one of your clients is a power marketer?

4 MR. ROBERTSON: I'm going to object to the
5 question on the basis of relevancy, and also the
6 witness has already said and she said in response
7 that she had no knowledge, so it's irrelevant because
8 it's not related to an issue in this case, and it's
9 also irrelevant on the basis of her answer to the
10 prior question.

11 MR. FINDLAY: I think it just goes to the
12 credibility of her opinion, given her knowledge of
13 the industry and in particular her own clients'
14 participation in that industry.

15 MR. ROBERTSON: You've already asked her what
16 her knowledge was, and her answer was she didn't
17 know, and therefore whatever answers were given to IP
18 in revisions to IP's -- or I'm sorry -- whatever
19 revised answers were given, you haven't even asked
20 this witness if she prepared the response, and I
21 think if you do ask her, she will tell you no, she
22 did not.

1 MR. FINDLAY: I can probably -- let me withdraw
2 that question and try another one.

3 Q. You are unaware whether any of the IIEC
4 companies in this proceeding are power marketers. Is
5 that correct?

6 A. That's correct.

7 Q. So when you opined on Altrade and
8 Bloomberg, you had not checked with any of your
9 clients as to whether they participated in this
10 market a fortiori. Is that correct?

11 A. That's correct.

12 Q. Same answer as to whether any of the IIEC
13 companies are on the PPO? You do not know?

14 MR. ROBERTSON: Objection; I object. You
15 directed that question to Mr. Stephens. That
16 question should be directed to Mr. Stephens. It
17 wasn't directed to this witness.

18 MR. FINDLAY: In fact, -- may I borrow this
19 again?

20 THE WITNESS: It's yours.

21 MR. FINDLAY: In fact, each of the questions
22 said that witness Bowyer and Stephens had no

1 knowledge of the matters asserted.

2 MR. ROBERTSON: Had no knowledge of whether or
3 not somebody was a power marketer.

4 MR. FINDLAY: No, I think as to each of these.
5 Let me just read it to you.

6 MR. ROBERTSON: Maybe if you show it to me,
7 maybe I don't have an objection. Those were
8 questions you raised, not Illinois Power, and I think
9 they were directed to Mr. Stephens.

10 MR. FINDLAY: No, actually we or Commonwealth
11 Edison Company asked how many IIEC members have CTCs
12 of zero, and the response is to object, but then to
13 state without waiving the objection --

14 MR. ROBERTSON: Whoa whoa whoa.

15 MR. FINDLAY: If I could just finish.

16 MR. ROBERTSON: No, you can't finish because
17 you're putting into the record something that we
18 objected to on the basis of relevancy. Now if you
19 can show me where this witness has testified about
20 the PPO option, where she's even discussed it in any
21 form or fashion, then I will let you ask the
22 question, but I don't think this witness talks about

1 the PPO option. Therefore I object to the line of
2 questioning.

3 MR. FINDLAY: Your Honor, on page 2 to 3 the
4 witness points out that the market value index is
5 used in calculating transition charges "and in
6 establishing the pricing for energy supplied under
7 the power purchase option services", and I think at
8 several other places the power purchase option is
9 mentioned in the testimony.

10 MR. ROBERTSON: Now she's describing what's in
11 the Act, which your witness, Ms. Juracek, also does I
12 think, and it doesn't mean that she has knowledge of
13 the company's rates. If you want to ask her if she
14 knows what the power purchase option is, other than
15 its reference in the statute, then you might be able
16 to develop a line of cross, but this witness is not
17 an expert on the rates, and we haven't presented her
18 as an expert on the rates. She hasn't purported to
19 describe who is on different rates or why they're on
20 them or should they be on them or how many are on
21 them. Therefore, I don't see the relevancy.

22 MR. FINDLAY: I'll withdraw that question.

1 Q. Ms. Bowyer, you're not testifying at all
2 today -- none of your -- withdraw that.

3 None of your testimony today relates in
4 any sense to the power purchase option. Is that
5 correct?

6 A. Only as the power purchase option is
7 connected statutorily to market value indexes and
8 whether or not companies decide they want to take
9 that option or not, but I'm not testifying -- I don't
10 have any knowledge about rates. I'm not a rate
11 expert.

12 Q. And you don't have any knowledge as to
13 whether any IIEC companies are on the power purchase
14 option, do you?

15 MR. ROBERTSON: Objection as to relevancy. I
16 don't know whether there's 100 on it or 200 on it. I
17 don't know what it has to do with her testimony.

18 EXAMINER JONES: Well, the objection is
19 overruled. I mean the witness makes specific
20 reference in her testimony on pages 2 and 3, perhaps
21 other places, line 19 through line 2 on page 3. I
22 mean the door is opened on that to some degree at

1 least, so objections to all questions relating to the
2 PPO just seem to me to be ones that are really not
3 well taken at this point. That's not to say there
4 may be some questions that go, you know, beyond what
5 the witness has gotten into, but I mean this last
6 question, for example, seems to me to be fair game.

7 MR. FINDLAY: And let me just ask a similar
8 question.

9 Q. You were not aware when you submitted
10 your testimony of how many IIEC members have a CTC of
11 zero or any other number, were you?

12 A. I don't -- no, I don't have any specific
13 knowledge as to saying five of them do, ten of them
14 do, no.

15 Q. Do you have any specific knowledge as to
16 what the CTCs of any of them?

17 A. No, not specifically. All I know is I
18 know in some discussions that I've overheard or have
19 been party to that some of them have CTCs of zero,
20 some of them to the power purchase option, some
21 meaning more than one. I don't know specific company
22 names. I couldn't, to be quite honest, name you the

1 name of every company in the IIEC.

2 Q. So the answer to my question was no.

3 Correct?

4 A. Correct.

5 Q. All right. Now, we can agree, can't we,
6 that the purpose of this proceeding is to determine
7 the market value index that will be used to establish
8 the market prices of power and energy? Is that
9 correct?

10 A. Correct.

11 Q. And as an economist, you would agree that
12 in order to determine a market value, you first have
13 to decide what the market is. Right?

14 A. Correct.

15 Q. I'd like you to look at your response to
16 Request Number 1 of our Third Data Request.

17 A. Yes. That I have.

18 Q. All right. In this data request we asked
19 you to explain what you meant by the word "market" at
20 various places in your testimony. Do you recall --

21 A. Correct.

22 Q. Did you prepare the answer to that --

1 A. Yes, I did.

2 Q. -- data request? And just to -- I know
3 that I talk fast, and I think you're a similar sort
4 of person that I am. Just wait for me to finish
5 because I think the Reporter isn't going to pick it
6 up sometimes, Dr. Bowyer.

7 Now correct my count if I'm wrong again,
8 but in the testimony I think you use the word market
9 to refer to six different things: the Cinergy forward
10 market in total; the market in Illinois statute,
11 Section 16-112(a); the Cinergy forward market as
12 represented by IP in its methodology; the Altrade and
13 Bloomberg Cinergy forward market; a place where
14 buyers and sellers sell a good or service; and the
15 Altrade and Bloomberg Into ComEd forward market.
16 Does that sound right?

17 A. Actually I believe there's one more. I
18 refer to the market in the quote from the person from
19 Altra Energy about the market for electricity, so.

20 Q. So seven.

21 A. Yeah, somewhere in that.

22 Q. Now, let's be very precise. What market

1 are we measuring the price in for purposes of this
2 proceeding? Which of those seven?

3 A. Well, the purposes of this proceeding are
4 to measure the market that the utility sells into and
5 its customers buy, so the statutory market or the
6 Illinois section -- I'm not very good with numbers --
7 16-112(a) market is what we're trying to determine.

8 Q. And the purpose of determining the market
9 value is to provide a credit against the CTC and the
10 price of the PPO. Right?

11 A. Correct.

12 Q. And so can we agree also that the market
13 value ought to be set at the price at which ComEd can
14 sell its freed-up power and energy?

15 A. Yeah. That sounds reasonable. I'm not
16 an attorney to know what the statute meant by market.
17 That's not my framework.

18 Q. Well, you're one of the few lucky people
19 in this room that's not an attorney, Dr. Bowyer.

20 Now before you started cross-examination
21 you made a correction to your testimony, and you
22 corrected on page 4 where it had said one of the

1 flaws was the unregulated nature of the
2 Internet-based markets being used as the market. You
3 changed that to the unregulated nature of the
4 Internet-based markets being used as part of the
5 market. Is that correct?

6 A. Correct.

7 Q. So I think we're all in agreement now
8 that the Altrade and Bloomberg exchange is not the
9 entire market being measured for purpose of the
10 market value index, right?

11 A. No, that's not what we're in agreement
12 of. What I changed there was not because Altrade and
13 Bloomberg is not the market. In the case of the
14 Illinois Power proposal, they use prices from other
15 sources other than Altrade and Bloomberg, so it isn't
16 accurate to say that they are using Altrade and
17 Bloomberg as the market. They are not. They are
18 using Altrade, Bloomberg, and other data sources.

19 So if you go to page -- give me a second
20 -- page 11 of my testimony, lines 1 and 2, you'll see
21 the same sentence as it relates to Commonwealth
22 Edison, and the "part of" is not in there because

1 Commonwealth Edison does not use those alternate or
2 other data sources. It only uses Altrade and
3 Bloomberg.

4 Q. So it's your contention at least as to
5 Commonwealth Edison Company that the market being
6 measured is the Altrade and Bloomberg exchange.
7 Correct?

8 A. Yes.

9 Q. All right. Do you have your response to
10 I guess it's response 7(c) where you've been asked to
11 provide documents supporting your concerns about
12 using Altrade and Bloomberg? It included a couple
13 articles attached to it.

14 A. I don't have that. Is this an IP or
15 Commonwealth Edison?

16 Q. I believe it's Commonwealth Edison. I
17 was afraid you'd ask me that.

18 I might come back to that. I apologize.
19 I thought I had all this stuff handy, but I have been
20 handed so much paper this morning.

21 All right. Now, you note in your
22 testimony at a couple places that only about 2

1 percent of trades of electricity are done
2 electronically. Is that correct?

3 A. I referred to a quote by the president of
4 Altra Energy that made that statement.

5 Q. And that quote was from April 2000. Does
6 that sound about right?

7 A. Yes. I believe the article was in
8 Megawatt Daily around that time period.

9 Q. You've not gone back since April 1 to
10 update the 2 percent number, have you?

11 A. No. I don't have access to Altrade and
12 Bloomberg screens to be able to look at that
13 information.

14 Q. Well, the 2 percent number you got was
15 not from the Altrade or Bloomberg screens, was it?

16 A. It was just a quote.

17 Q. Right, and you've not gone back and tried
18 in any way to determine whether that 2 percent figure
19 is still accurate, have you?

20 A. No.

21 Q. Well, let's assume for a moment that 2
22 percent number is still correct. We can agree, can

1 we not, that even exchanges that only represent a
2 small percentage of the market for a product can
3 provide useful information about the price or value
4 of that product?

5 A. They can.

6 Q. I finally found the article.

7 A. Oh, good.

8 Q. And I apologize for the delay. As the
9 old saying goes, had it been a snake, it would have
10 bit me. It was right underneath.

11 That's the article.

12 A. Okay.

13 Q. All right.

14 A. I don't believe -- is this the article
15 that -- wait a minute.

16 Q. This was an article that IIEC submitted
17 stating that it supported IIEC's concerns about using
18 Altrade and Bloomberg.

19 A. Okay.

20 Q. And it's called "Trading Goes From Pits
21 to Bits".

22 A. Right.

1 Q. Do you recognize that?

2 A. Yes.

3 Q. And you said that this article provided
4 support for your concerns. Is that correct?

5 A. Yes.

6 Q. I'd like you to take a look at the
7 article.

8 A. Okay.

9 Q. Does it say at page 19, "Like an
10 elephant, the energy trading market is big and
11 getting bigger. However, unlike an elephant, it
12 isn't a single beast. Energy trading takes place on
13 different levels with different players using both
14 cutting edge and antiquated technologies, all partly
15 regulated, partly deregulated, and highly fragmented
16 by region"?

17 MR. ROBERTSON: One second. I may have an
18 objection.

19 I don't want to make too big a deal out of
20 this, Mr. Examiner, but this document was provided in
21 response to an inquiry about a preliminary list of
22 concerns that were presented by IIEC in the original

1 version of Docket 00-0259. Now I think a proper
2 foundation needs to be laid as to whether or not this
3 witness relied on this document in preparing her
4 testimony in this case. If this is the document
5 where the quote came from, then obviously she did, if
6 that's your representation.

7 MR. FINDLAY: Yeah. The quote -- to back up a
8 little bit, we had sent a data request saying please
9 send any papers, analyses, articles that support the
10 concerns that were expressed I believe in the
11 affidavit of Dr. Bowyer that was filed in the early
12 part of the testimony, and then we received two
13 articles. The first one was the one that produced
14 this 2 percent quote that we just talked about. Then
15 the second one was a longer article about Altrade and
16 Bloomberg, and we received these back when the only
17 testimony was this Dr. Bowyer affidavit actually I
18 believe.

19 MR. ROBERTSON: All right. Exhibit A that's
20 referenced here is Dr. Bowyer's affidavit?

21 MR. FINDLAY: I believe so. I think that was
22 the affidavit attached to your -- the comments that

1 you put in.

2 MR. ROBERTSON: I have a different recollection
3 than that because Dr. Bowyer's affidavit was attached
4 to a set of comments that the Examiner requested the
5 parties to file. This data request refers to a
6 preliminary list of concerns that we were asked to
7 submit, and my recollection is there was no affidavit
8 attached by Dr. Bowyer to that.

9 MR. FINDLAY: Maybe I could come at this a
10 different way.

11 MR. ROBERTSON: All I want is a proper
12 foundation. If she didn't rely on it, then I don't
13 know that you ought to be asking questions about it.

14 MR. FINDLAY:

15 Q. Let me just ask you, was this one of the
16 two articles that -- well, have you ever seen this
17 article before?

18 A. Yes, I have.

19 Q. And was this one of the articles that you
20 submitted as expressing or supporting your concern
21 about the thinness of the market?

22 A. I don't know if I submitted it. I mean

1 it was something that I had discussed with Eric and
2 with Mr. Stephens, and we talked about a number of
3 sources. That quote that is in my testimony came
4 from the other article, the Megawatt Daily article,
5 that was attached to whatever you handed me before.

6 Q. Right. But you reviewed this in
7 preparing for this case throughout the case.

8 A. Sure.

9 Q. All right. Let me go back to my original
10 question then about the elephant analogy that it's
11 not a single beast. Energy trading takes place on
12 different levels with different players using cutting
13 edge and antiquated technologies, all partly
14 regulated, partly deregulated, and highly fragmented
15 by region. Is that an accurate description of the
16 electricity trading market in your view?

17 A. I think it's a reasonable -- I'm not very
18 big on metaphors and analogies. I'm not sure I would
19 call it an elephant, but that sounds like a
20 reasonable description.

21 Q. And on page 20 of the article it
22 describes Altrade as "probably the largest online

1 trading system". Is that correct?

2 A. Could you point that out to me? Because
3 page 20 I'm --

4 Q. I will, if I can approach the witness.

5 A. I also have not very good vision, and
6 this is not a very good copy.

7 (Whereupon Mr. Findlay
8 approached the witness.)

9 Oh, okay. That's why I didn't see it.

10 Okay. Yes, I see that. What is your question?

11 Q. Well, my question would be, you've
12 studied this area now, haven't you?

13 A. Yes.

14 Q. Is this correct, in your view, that
15 Altrade is the largest online trading system?

16 A. I think that when they say trading
17 system, they mean for energy in general, including
18 natural gas, liquids, etc., not just electric power,
19 so I don't know as much about the natural gas online
20 market to be able to gauge. That sounds reasonable,
21 but I wouldn't have an opinion. I couldn't say as an
22 expert definitely it's the largest.

1 Q. Well, how about for electricity? You do
2 or don't know as to whether it's the largest?

3 A. I don't know for sure relative to
4 electricity that it is. Again, I have tried at some
5 -- a number of times to even to try to gain access to
6 these systems to be able to observe them and see what
7 kind of trading takes place and haven't been able to
8 gain access.

9 Q. All right. Do you think, in your view,
10 that Internet-based trading exchanges like Altrade
11 and Bloomberg are going to increase in importance in
12 the volume of trading in the future or are they going
13 to decrease?

14 A. I think that depends on what the
15 alternatives are in terms of trading. I was, as you
16 mentioned, a party and testified last year in the
17 cases where we were -- where the proposal was to use
18 futures entities, Cinergy futures contracts on the
19 NYMEX, and a number of people testified that this was
20 going to be a growing market and this was the wave of
21 the future, and since that time those markets have
22 diminished considerably, so I'm not sure you can

1 predict sometimes what markets take off and what
2 markets don't. I think if I knew that information I
3 would be working for an exchange developing new
4 products because it's very difficult sometimes to
5 gauge what will be a successful new product offering
6 in the futures or forward market.

7 Q. Well, isn't it true that, in fact, NYMEX
8 receded into the background because of Internet -
9 based trading exchanges like Altrade and Bloomberg?

10 A. I don't know that for a fact.

11 Q. You also expressed concern in your direct
12 testimony about the possibility of manipulation. Is
13 that correct?

14 A. Yes.

15 Q. In fact, --

16 EXAMINER JONES: Excuse me just a second. I
17 apologize for interrupting.

18 MR. FINDLAY: Sure.

19 EXAMINER JONES: There have been some questions
20 about an article there, and I think we just need a
21 little better indication or identification of that.
22 I don't mean marking it as an exhibit.

1 MR. FINDLAY: Sure.

2 EXAMINER JONES: I just need to know what it is
3 that's being referred to there.

4 MR. FINDLAY: I apologize. I thought I had
5 another copy in a folder, and it turned out I didn't.

6 It was an article provided in response to
7 Commonwealth Edison's First Data Requests, Request
8 Number 7(c), which stated provide any documents,
9 analyses, or reports that support IIEC's concerns
10 about the market value alternative --

11 EXAMINER JONES: What's the name on the
12 article?

13 MR. FINDLAY: In response, they provided, among
14 other things, an article in Utilities IT Magazine.

15 EXAMINER JONES: Is that the one that you were
16 inquiring about?

17 MR. FINDLAY: Yes. It was Utilities IT
18 Magazine, and, as I said, it was called "Trading Goes
19 From Pits to Bits".

20 EXAMINER JONES: And what's the date on that?

21 MR. FINDLAY: It's the March/April 2000 issue.

22 EXAMINER JONES: Thank you.

1 MR. FINDLAY: All right.

2 Q. In fact, the word you used about
3 manipulation in your testimony at a couple places is
4 the possibility of manipulation or the potential for
5 manipulation. Is that right?

6 A. Yes.

7 Q. So you haven't noted in your testimony
8 any specific actual instances of manipulation by
9 ComEd or anybody else, have you?

10 A. No.

11 Q. In fact, you haven't noted in your
12 testimony any actual instances of manipulation by
13 anybody in the electricity market, have you?

14 A. I wouldn't have any knowledge of that
15 because I don't have access to those markets.

16 Q. So the answer to my question is no.

17 A. No.

18 Q. Now another reason you give for there
19 being a possibility of manipulation is that the
20 utility will know the exact time the screen print is
21 taken. Is that correct?

22 A. Yes.

1 Q. Now have you reviewed Attachment A to
2 Mr. Crumrine's and Mr. Nichol's testimony, rebuttal
3 testimony, which set forth some new procedures ComEd
4 has instituted for taking screen prints?

5 A. Yes.

6 Q. Does that change your opinion in any way
7 as to the possibility of manipulation?

8 A. No.

9 Q. You don't think that lessens in any way
10 the possibility of manipulation?

11 A. You didn't ask me that. You asked if it
12 would change my opinion.

13 Q. All right. Let me ask the second
14 question then.

15 A. Okay.

16 Q. That lessens the ability of Commonwealth
17 Edison to manipulate the Altrade and Bloomberg
18 methodology, doesn't it?

19 A. It depends on how successful the firewall
20 is between the trading desk and the person collecting
21 the information. In my experience, as someone
22 relative to investments and teaching investment

1 classes, firewalls are very common in the investment
2 banking industry between the merger and acquisition
3 side of the business and the investment banking side
4 of the business, and many times firewalls don't work.
5 People still talk. Information still gets spread
6 even in large organizations. So I would have much
7 more confidence in an outside party collecting the
8 data that that would virtually eliminate the
9 possibility of insiders having market knowledge.

10 Q. And you recognize that Commonwealth
11 Edison has said that it would be amenable to that
12 outside -- an outside supervision, don't you?

13 A. Yes.

14 Q. And let me ask you one other thing. If
15 ComEd's procedures are followed, if we assume good
16 faith and we assume that they're followed, that will
17 lessen the ability to manipulate, won't it?

18 A. Certainly if they're followed, but I
19 think this is a very important proceeding, and I
20 think to make assumptions of good behavior when there
21 are alternatives that don't rely on that would be a
22 much better thing. As one of my favorite quotes I

1 often tell my students is assumption is the mother of
2 all screw-ups. Occasionally when one assumes
3 something, you get what you assume, and, you know,
4 you have to be a little bit careful, so I think it is
5 better to correct the problem, and let's assume
6 everybody at ComEd is great and upstanding and
7 wonderful people, as I'm sure they all are, but it at
8 least sends some reassurance to the market that the
9 data is being collected in an upright and forthright
10 matter.

11 Q. I'm tempted to say no further questions
12 after you've conceded that everyone at Commonwealth
13 Edison is upstanding, but I have to go on.

14 Let me have you take a look at page 11 of
15 your testimony.

16 A. Okay.

17 Q. You say there, do you not, that the
18 potential for manipulation is increased by the fact
19 that many of the observations are bid/offer midpoints
20 rather than actual transactions? Is that right?

21 A. It doesn't say bid and offer midpoints,
22 but it does say bid and ask price quotes.

1 Q. My summary was fair, wasn't it?

2 A. Right, correct.

3 Q. Now, if ComEd posts a selling price, an
4 offer, below the true market price on these
5 exchanges, someone can raise their hand and say I
6 take it, can't they?

7 A. They can if -- from my understanding from
8 reading some of the other testimony of people who
9 have more familiarity and actually have had access to
10 Altrade and Bloomberg, which I have not had, that it
11 is possible to restrict who you trade with on those
12 screens. In other words, you can put in and say I
13 don't want to trade with Party A for whatever reason,
14 and their quotes will not -- their trades and offers
15 or bids and offers will not be accepted against
16 yours, so in theory, yes. In a market that's
17 relatively efficient, if people put up an offer that
18 is -- or a bid or an offer that's out of the range of
19 normal, someone would hit on it, yes.

20 Q. And you personally don't know, because
21 you don't have access to Altrade and Bloomberg, who's
22 been enabled or disabled, do you?

1 A. No.

2 Q. Were you aware when you submitted your
3 direct testimony that the International Petroleum
4 Exchange uses bid/offer midpoints?

5 A. I don't think the -- no, I wasn't. I
6 read that in one of the testimonies. I know that is
7 not uncommon in the futures markets -- in other
8 futures markets where there may not be a question at
9 the time -- there may be a question at the time of
10 close whether or not a trade took place that could be
11 legitimately called the close, and for futures
12 markets purposes you must have a closing or a
13 settlement price in order to settle out the accounts
14 of the day, so they are required to post something to
15 settle out accounts at the end of the trading day.

16 Q. So actually using this bid/offer midpoint
17 is something that a lot of futures exchanges use.

18 A. I don't know if a lot of them use it
19 because most of them don't have a problem with not
20 having trades, like Altrade and Bloomberg has on the
21 Into ComEd market when you don't have very many
22 trades taking place.

1 Q. But I think you'd said just a second ago
2 that it was not uncommon to use bid/offer midpoints
3 in the absence of trades.

4 A. That's correct, but in most cases there
5 are trades that have taken place during the day, and
6 you're not just dealing with bids and offers.

7 Q. Now you also expressed concern in your
8 testimony about the fact that the Altrade and
9 Bloomberg markets are unregulated.

10 A. Correct.

11 Q. But surely, as an economist, you will
12 agree that some unregulated markets are very
13 competitive and that prices that are reflected in
14 that market are competitive prices.

15 A. Absolutely. I think that in some
16 respects some of the largest markets in the world are
17 unregulated. The Treasury Bill market, for example,
18 is an unregulated, very deep, highly competitive
19 market, but most of the time in order to have that
20 sort of deep, competitive market you require a lot of
21 participants all with access to the information and
22 who are able to trade. Almost anybody in this room

1 can trade a T-bill 24 hours a day around the world.
2 You can look up the prices on CNBC or on the
3 Internet, so you have the ability because of that
4 transparency in the market to be able to self-
5 regulate because the individuals participating in the
6 market regulate it.

7 Q. How about that market for crude oil in
8 Cushing, Oklahoma? Not all of us can participate in
9 that market, but that's widely recognized as the
10 market for WTI, for West Texas Intermediate crude,
11 isn't it?

12 A. I'm sorry. I don't have any knowledge of
13 that.

14 Q. You've not heard of Cushing, Oklahoma?

15 A. I've heard of Cushing, Oklahoma, but I
16 don't have knowledge as to whether that's recognized.

17 Q. Do you have knowledge of how many
18 entities that are represented in this room can trade
19 on Altrade and Bloomberg?

20 A. No, I don't.

21 Q. You also expressed some concern about the
22 lack of transparency of the Altrade and Bloomberg

1 exchanges, correct?

2 A. Yes.

3 Q. Well, let's start with the basics.

4 Certainly it's true that those exchanges are more
5 transparent than the NFF process, aren't they?

6 A. I'm not sure I agree with that.

7 Transparency means that everyone is equivalent in
8 terms of access to information. Now you could argue,
9 as a couple people have in multiple cases, that the
10 NFF is a black box, but at least as a black box it is
11 equivalently black to everybody. In other words, the
12 utility gets the posting on the Web of the NFF report
13 at the same time I do, as a large power user does, as
14 anyone else does. That is not the case with Altrade
15 and Bloomberg. So transparency is -- what may be
16 very transparent to ComEd may not be transparent to
17 me or to a large power user in the State of Illinois.

18 Q. Now one of your clients is Abbott
19 Laboratories in this proceeding. Is that correct?

20 A. I don't know. I don't know the name of
21 every customer that -- every client, no.

22 MR. FINDLAY: I'm right, aren't I, Eric?

1 MR. ROBERTSON: Well, I want to see where
2 you're going first. Yes, you're right.

3 (Laughter)

4 Q. Abbott Laboratories could go on Altrade
5 and Bloomberg if they're willing to pay the fee and
6 are interested in trading power, can't they?

7 A. I believe, according to the testimony
8 that I read, and I have not talked directly to
9 Altrade and Bloomberg, but I believe the testimony
10 that is to be filed from Mr. Zuraski states you have
11 to be a power -- a trader of power. I don't know how
12 Altrade and Bloomberg determines if someone is just a
13 power user, if that makes them eligible, even if
14 they're willing to pay, to be on the system.

15 Q. If someone sets up a -- if Abbott
16 Laboratories, which is a multi-billion dollar a year
17 corporation, sets up a power marketing arm, they can
18 trade, can't they?

19 A. I don't know. I don't know what the
20 rules of Altrade and Bloomberg are.

21 Q. Do you know whether any of your clients
22 could be customer self-managers and do trading?

1 A. I don't know.

2 Q. If you could take a look, please, at your
3 response -- excuse me -- IIEC's response to Data
4 Request Number 4 to ComEd's Third Data Request.

5 A. Yes.

6 Q. And you're asked to explain how this,
7 which we'll come back to, increases the likelihood of
8 reduced confidence in the accuracy of the MVI and the
9 probability of market manipulation. Is that correct?

10 A. Yes, that's what I was asked.

11 Q. And I think the "this" that you're
12 referring to is the lack of transparency about what
13 you expressed concern.

14 A. Yes.

15 Q. And you answered -- excuse me. Did you
16 prepare the answer to this data request?

17 A. Yes.

18 Q. And you answered it saying "Without a
19 fully transparent market, potential and current
20 customers may not feel that market value has been
21 determined fairly and without manipulation." Is that
22 your answer?

1 A. Yes.

2 Q. Now again, let's be very precise. Again,
3 you're talking there about the perception of
4 potential and current customers, correct?

5 A. Yes.

6 Q. And, again, in that data request response
7 you do not provide actual instances of manipulation,
8 do you?

9 A. No.

10 Q. And I'm honestly asking for -- because
11 I'm confused, when you're talking about customers
12 there, you're not talking about the traders who buy
13 and sell power, are you? You're talking about the
14 ultimate end user customers, the people who are
15 actually using electricity to run their plants.

16 A. I'm talking about both. If the trader
17 does not have access to Altrade and Bloomberg, not
18 every trader pays the fee to have Internet access to
19 those markets.

20 Q. But for the traders that do have access,
21 the system is quite transparent. Correct?

22 A. Yes.

1 MR. FINDLAY: I think that's all I have.

2 EXAMINER JONES: I believe Mr. Lakshmanan may
3 have some questions. Is that correct?

4 MR. LAKSHMANAN: I have just a couple.

5 CROSS EXAMINATION

6 BY MR. LAKSHMANAN:

7 Q. Dr. Bowyer, throughout your direct
8 testimony you raise concerns about manipulation, and
9 that was discussed earlier today. Is that correct?

10 A. Yes.

11 Q. Are you aware that there are laws that
12 address price fixing and other inappropriate use of
13 market power?

14 A. Yes.

15 Q. Are you aware that some of the penalties
16 for violations of those laws include criminal
17 sanctions?

18 A. Yes.

19 MR. LAKSHMANAN: That's all the questions I
20 have.

21 EXAMINER JONES: Okay. Any questions?

22 MR. FLYNN: No.

1 EXAMINER JONES: Do other parties have
2 cross-examination questions for Dr. Bowyer? All
3 right.

4 Is there, Mr. Robertson, any redirect?

5 MR. ROBERTSON: Could I have a few minutes?

6 EXAMINER JONES: All right. We'll break for
7 five minutes at this time.

8 (Whereupon a short recess was
9 taken.)

10 EXAMINER JONES: Back on the record.

11 Mr. Robertson, any redirect of Dr. Bowyer?

12 MR. ROBERTSON: Yeah.

13 REDIRECT EXAMINATION

14 BY MR. ROBERTSON:

15 Q. Dr. Bowyer, during the cross-examination
16 you were asked questions about the market price
17 you're attempting to measure in -- or the
18 methodologies presented in this case are attempting
19 to measure, and I think you made reference to the
20 fact that Section 16-112(a) of the Act requires that
21 the market price be equivalent to the price at which
22 utilities can sell and customers in their service

1 area can buy. Do you remember that?

2 A. Yes.

3 MR. FINDLAY: May I move to strike that
4 testimony? I think it's legal testimony. It's also
5 a leading question. He just read a statute to her
6 and then she said yes.

7 MR. ROBERTSON: I didn't read it to her. I
8 asked her as a foundation question do you remember
9 that line of questioning because she provided that
10 statement in her answer.

11 MR. FINDLAY: I don't think she had said that
12 the price being measured was and then quote the
13 statute, which is what you said. I think the
14 testimony said --

15 MR. ROBERTSON: Well, let me go straight to the
16 point.

17 MR. FINDLAY: Okay.

18 MR. ROBERTSON:

19 Q. During the cross-examination you made the
20 statement that, at least some point in your
21 cross-examination, that you thought that the market
22 we were attempting to measure was the market in which

1 the utility can sell. Do you recollect that?

2 A. Yes.

3 Q. All right. Now, do you wish to clarify
4 that answer?

5 A. Well, I didn't remember -- my memory of
6 it, of the conversation and the question, was I think
7 I did mention the statutory language because I
8 mention it in my testimony, and the statutory
9 language refers to not only the price at which or the
10 value at which ComEd or any utility sells power but
11 also customers in its service area buy.

12 Q. All right. So you're not intending -- it
13 is not your testimony today that we're only trying to
14 determine the price at which the utility can sell.

15 A. No. That is not at least from my
16 understanding what the law states.

17 Q. Now, in assessing the accessibility,
18 transparency, and liquidity of a commodity market, do
19 you necessarily have to be a member of the industry
20 that produces or deals in that commodity?

21 A. No.

22 Q. So, for example, you don't have to be a

1 grain producer in order to assess the accessibility,
2 transparency, and liquidity of the corn futures
3 market.

4 A. No.

5 Q. Nor do you have to be an electrician to
6 assess the accessibility, transparency, and liquidity
7 of an electric futures market.

8 A. No.

9 Q. Also you were questioned about the use of
10 bid and offers to settle accounts at the end of the
11 trading day. Do you remember that?

12 A. Yes.

13 Q. Now, do you see any difference between
14 the use of bid and offers for that purpose and the
15 use of bid and offers by the various electric
16 utilities in their methodologies in this case?

17 A. Well, I think there's a difference
18 because --

19 Q. You need to answer the question yes or no
20 first. Do you see difference?

21 A. I'm sorry. Yes, I do see a difference.

22 Q. Okay. And what is that difference?

1 A. I think there is a difference between a
2 futures exchange that requires some sort of
3 settlement value at the end of a trading day, and
4 typically the rules of futures exchanges require that
5 that trade take place in the last one minute of
6 trading, and that can be variable by exchange. That
7 doesn't mean that there have been no trades all day
8 or that there has been no trading in that contract.
9 It means in the last minute there either was no
10 trading or there was a dispute over what was the last
11 trade of the day. If you've ever been to Chicago to
12 the Board of Trade or the Merc, it is very clear that
13 there are times when there is so much activity at the
14 end of the trading day there are questions as to what
15 was the final settlement price, and for that purpose
16 they use bids and offers. That is different than
17 using bids and offers to determine market value in a
18 market, namely Altrade and Bloomberg Into ComEd
19 forwards, where there is virtually no trading.

20 MR. ROBERTSON: Thank you. No further
21 questions.

22 EXAMINER JONES: Any recross?

1 MR. FINDLAY: I would just like to ask one or
2 two questions.

3 RE CROSS EXAMINATION

4 BY MR. FINDLAY:

5 Q. When you're talking about these other
6 futures exchanges and you just said that they use
7 bid/offer midpoints in the absence of trades in the
8 last minute of the day, they use bid/offer midpoints
9 in the absence of any trades for the last few hours
10 of the day too, don't they?

11 A. I'm not really aware of the specific
12 rules of which contracts. There are some very,
13 obviously, lightly traded contracts where if they
14 have to reach settlement, they might use that. I'm
15 not aware exactly of what their rules are.

16 Q. So your answer is you do not know.

17 A. I don't know for sure.

18 Q. And so in these exchanges though you
19 would concede that in the absence of a transaction,
20 bid/offer midpoints are used.

21 A. Yes.

22 MR. FINDLAY: I don't have anything else.

1 RE-REDIRECT EXAMINATION

2 BY MR. ROBERTSON:

3 Q. Is the use of those the exception and not
4 the rule?

5 A. Yes.

6 Q. And the ComEd proposal is the rule, not
7 the exception. Is that correct?

8 A. Yes.

9 MR. ROBERTSON: Thank you.

10 EXAMINER JONES: All right. Thank you,
11 Dr. Bowyer.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 EXAMINER JONES: It looks like our best bet is
15 to go with the Jones/Peters panel next. Is that
16 agreeable to the parties?

17 It looks like the witness box might get a
18 little crowded.

19 MR. FEIN: They can sit on each other's lap.

20 EXAMINER JONES: Off the record.

21 (Whereupon at this point in the
22 proceedings an off-the-record

1 discussion and period transpired.)

2 EXAMINER JONES: Back on the record.

3 While you're still standing, I'll go ahead
4 and swear you both in.

5 (Whereupon the two witnesses were
6 sworn by Examiner Jones.)

7 EXAMINER JONES: Thank you. Have a seat.

8 LEONARD M. JONES

9 MARK J. PETERS

10 called as witnesses on behalf of Illinois Power
11 Company, having been first duly sworn, were examined
12 and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LAKSHMANAN:

15 Q. Could you please state your names and
16 business addresses?

17 A. (Mr. Jones) Leonard M. Jones, Illinois
18 Power Company, 500 South 27th Street, Decatur,
19 Illinois 62521.

20 A. (Mr. Peters) Mark J. Peters, Illinois
21 Power Company, 500 South 27th Street, Decatur,
22 Illinois 62521.

1 Q. And what are your positions with Illinois
2 Power Company?

3 A. (Mr. Jones) Manager of Business Planning
4 and Forecasting.

5 A. (Mr. Peters) Control Area Resource
6 Manager.

7 Q. Have you prepared certain testimony and
8 exhibits to offer in this docket?

9 A. (Mr. Jones) Yes.

10 A. (Mr. Peters) Yes.

11 Q. Do you have before you a copy of a
12 document that's been marked for identification as IP
13 Exhibit 2.1 bearing the caption Prepared Direct
14 Testimony of Leonard M. Jones and Mark J. Peters?

15 A. (Mr. Jones) Yes.

16 A. (Mr. Peters) Yes.

17 Q. Does that document consist of 17 pages of
18 questions and answers in written form?

19 A. (Mr. Jones) Yes.

20 A. (Mr. Peters) Yes.

21 Q. Is IP Exhibit 2.1 the prepared direct
22 testimony you wish to offer in this docket?

1 A. (Mr. Jones) Yes.

2 A. (Mr. Peters) Yes.

3 Q. Do you have any corrections or changes to
4 make to IP Exhibit 2.1?

5 A. (Mr. Jones) No.

6 A. (Mr. Peters) No.

7 Q. If I were to ask you the questions shown
8 on IP Exhibit 2.1 at this hearing, would you give the
9 same answers as shown on that exhibit?

10 A. (Mr. Jones) Yes.

11 A. (Mr. Peters) Yes.

12 Q. Do you also have before you copies of
13 exhibits that have been marked as IP Exhibits 2.2,
14 2.3, 2.4, and 2.5?

15 A. (Mr. Jones) Yes.

16 A. (Mr. Peters) Yes.

17 Q. Were these exhibits prepared under your
18 supervision and direction?

19 A. (Mr. Jones) Yes.

20 A. (Mr. Peters) Yes.

21 Q. Are these exhibits identified in your
22 prepared direct testimony, IP Exhibit 2.1?

1 A. (Mr. Jones) Yes.

2 A. (Mr. Peters) Yes.

3 Q. Do you have any corrections or changes to
4 make to IP Exhibits 2.2, 2.32.4, or 2.5?

5 A. (Mr. Jones) No.

6 A. (Mr. Peters) No.

7 Q. Is the information set forth in Exhibits
8 2.22.3, 2.4, and 2.5 true and correct to the best of
9 your knowledge?

10 A. (Mr. Jones) Yes.

11 A. (Mr. Peters) Yes.

12 Q. Do you also have before you a copy of a
13 document that's been marked for identification as IP
14 Exhibit 2.6 bearing the caption Prepared Rebuttal
15 Testimony of Leonard M. Jones and Mark J. Peters?

16 A. (Mr. Jones) Yes.

17 A. (Mr. Peters) Yes.

18 Q. Does that document consist of 29 pages of
19 questions and answers in written form?

20 A. (Mr. Jones) Yes.

21 A. (Mr. Peters) Yes.

22 Q. Is IP Exhibit 2.6 the prepared rebuttal

1 testimony you wish to offer in this docket?

2 A. (Mr. Jones) Yes.

3 A. (Mr. Peters) Yes.

4 Q. Do you have any corrections or changes to
5 make to IP Exhibit 2.6?

6 A. (Mr. Jones) We have one.

7 Q. Would you please describe it?

8 A. (Mr. Jones) On line 511, in my version
9 it's on page 25, the word "is" should be changed to
10 the word "it".

11 Q. With that revision inserted, if I were to
12 ask you the questions shown on IP Exhibit 2.6 at this
13 hearing, would you give the same answers as shown on
14 that exhibit?

15 A. (Mr. Jones) Yes.

16 A. (Mr. Peters) Yes.

17 MS. READ: Joe, could you ask them to read that
18 again? We missed it.

19 Q. Sure. Could you describe the one change?

20 A. (Mr. Jones) It's line 511, on or about
21 page 25. The word "is" should be changed to the word
22 "it".

1 MR. SEIDEL: I don't have that word on my
2 exhibit. Is it 2.6?

3 MR. LAKSHMANAN: Yes.

4 MR. WARREN: Would you read the line, the
5 sentence, so we know.

6 A. (Mr. Peters) It's Q and A 23, line 511.

7 MR. SEIDEL: That appears on my line 510.

8 MR. LAKSHMANAN: That may have been the way
9 things print out. What we submitted were the same as
10 the hard copies that were provided to all the parties
11 as part of service as opposed to the electronic
12 version since different things print out differently.

13 It is, in fact, question number 23, and
14 it's part of that question where it goes on to say
15 "that it is more efficient for an ARES to have a
16 single base index and that" and then the word is "is"
17 and it should be "it allows customers to more easily
18 shop for electricity?" It's part of question number
19 23.

20 Q. Do you also have before you a copy of an
21 exhibit that's been marked as IP Exhibit 2.7?

22 A. (Mr. Jones) Yes.

1 A. (Mr. Peters) Yes.

2 Q. Was this exhibit prepared under your
3 supervision and direction?

4 A. (Mr. Jones) Yes.

5 A. (Mr. Peters) Yes.

6 Q. Is this exhibit identified in your
7 prepared rebuttal testimony, IP Exhibit 2.6?

8 A. (Mr. Jones) Yes.

9 A. (Mr. Peters) Yes.

10 Q. Do you have any corrections or changes to
11 make to IP Exhibit 2.7?

12 A. (Mr. Jones) No.

13 A. (Mr. Peters) Can I clarify? Your prior
14 question, did you ask this is identified as 2.6 or
15 2.7?

16 Q. No, is it identified in 2.6.

17 A. (Mr. Peters) Okay. Thank you.

18 Q. And do you have any corrections or
19 changes to make to IP Exhibit 2.7?

20 A. (Mr. Peters) No.

21 Q. Is the information set forth in Exhibit
22 2.7 true and correct to the best of your knowledge?

1 A. (Mr. Jones) Yes.

2 A. (Mr. Peters) Yes.

3 Q. Do you also have before you a copy of a
4 document that's been marked for identification as IP
5 Exhibit 2.8 bearing the caption Prepared Surrebuttal
6 Testimony of Leonard M. Jones and Mark J. Peters?

7 A. (Mr. Jones) Yes.

8 A. (Mr. Peters) Yes.

9 Q. Does that document consist of 13 pages of
10 questions and answers in written form?

11 A. (Mr. Jones) Yes.

12 A. (Mr. Peters) Yes.

13 Q. Is IP Exhibit 2.8 the prepared
14 surrebuttal testimony you wish to offer in this
15 docket?

16 A. (Mr. Jones) Yes.

17 A. (Mr. Peters) Yes.

18 Q. Do you have any corrections or changes to
19 make to IP Exhibit 2.8?

20 A. (Mr. Jones) No.

21 A. (Mr. Peters) No.

22 Q. If I were to ask you the questions shown

1 on IP Exhibit 2.8 at this hearing, would you give the
2 same answers as shown in that exhibit?

3 A. (Mr. Jones) Yes.

4 A. (Mr. Peters) Yes.

5 MR. LAKSHMANAN: At this time I'm going to move
6 to the portion that deals with the response to the
7 surrebuttal of CILCO and NEV, if that's acceptable.

8 EXAMINER JONES: Yes, go ahead.

9 Q. Have you had an opportunity to read the
10 surrebuttal testimony filed by NewEnergy in this
11 case?

12 A. (Mr. Peters) Yes.

13 Q. Do you have any comments on NewEnergy's
14 continued assertion that an adjustment must be made
15 to the market value to account for Illinois Power
16 "not allowing suppliers to use financially firm
17 (sometimes called marketer firm with liquidated
18 damages) as a designated network resource"?

19 A. (Mr. Peters) Yes. The issue at hand has
20 to do with the determination of value. I agree with
21 NewEnergy that there may be a difference in the
22 physical characteristics between the firm contracts

1 which are used to establish the index and the
2 physical characteristics of the firm resources which
3 are required to be held to secure Network Integrated
4 Transmission Service under Illinois Power's Open
5 Access Transmission Tariff. What I do not agree
6 with, and to date have not seen any evidence of, is
7 that the value of the two is necessarily different.
8 In fact, we testified to the financial consequences
9 of failing to deliver on a financially firm contract
10 and argued that its value may indeed be greater.

11 Lastly, NewEnergy is not entirely correct
12 in stating that a marketer firm contract cannot be
13 used to secure Network Integrated Transmission
14 Service under Illinois Power's Open Access
15 Transmission Tariff. The requirement, based upon my
16 experience and understanding, is that in order to
17 secure Network Integrated Transmission Service, the
18 customer must demonstrate that they have secured an
19 actual supply resource which is firm in nature from
20 source to sink. If the customer has purchased a
21 marketer firm contract and can demonstrate that the
22 contracts behind that contract are likewise firm from

1 a source generator to the sink, then it will be
2 allowed. What is not allowed is the use of a
3 financial contract which does not have any commitment
4 or indication of the source of the energy to be
5 delivered. It is my understanding and experience
6 that this requirement is in compliance with the Open
7 Access Transmission Tariff of Illinois Power. Please
8 note that I do not work in nor do I represent the
9 Transmission Service function of Illinois Power. My
10 comments only reflect my understanding and experience
11 in regards to the OATT and IP's business practices.

12 MR. FEIN: At this point, Your Honor, I'd like
13 to note for the record that the witness obviously is
14 reading from a prepared statement in response to the
15 surrebuttal testimony. The understanding today was
16 that both Illinois Power and Commonwealth Edison
17 would be allowed to respond to the surrebuttal
18 testimony in oral fashion. Clearly he's testifying
19 in oral fashion, but it appears that he was strictly
20 reading from a prepared statement. As a result, we
21 would ask that we at least be provided with a copy of
22 the statement that the witness just read from.

1 MR. LAKSHMANAN: I object to that because when
2 we were discussing this, in fact, I pointed out that
3 he would be using some prepared remarks, but that he
4 would be doing it orally on the record and that what
5 he said on the record would be what would control.

6 MS. READ: My memory is Illinois Power was
7 going to read from a prepared statement. Copies
8 weren't discussed.

9 MR. FEIN: Well, I was never told of that. If
10 that was the case, I would have asked for a copy of
11 it so we could review it as opposed to hearing a long
12 statement on the stand. It was not a question and
13 answer from Mr. Lakshmanan and the witness similar to
14 the procedure that was employed by Commonwealth
15 Edison.

16 I mean I don't see any harm. He just read
17 the statement into the record, so. It's just for
18 purposes of cross-examination.

19 MR. LAKSHMANAN: It's not clear that he
20 necessarily read it exactly as it is written. What
21 he said on the record is what will control.

22 MR. FEIN: Understood.

1 MR. LAKSHMANAN: Therefore there's no reason to
2 attempt to --

3 MR. FEIN: It was a rather lengthy statement
4 that was read. Without questions pending, that was,
5 you know, clearly a prepared statement. We're just
6 asking for the opportunity to review that for
7 purposes of cross-examination. I'm not -- otherwise
8 I would ask to hold over the witness.

9 MR. LAKSHMANAN: No lengthier than the length
10 of the total direct I believe that was supplied by
11 Mr. Naumann on this issue. It just happened to be in
12 the form of a statement. We had a very short period
13 of time to respond. We were attempting to do so in a
14 manner that would move the case forward as quickly as
15 possible.

16 MR. FEIN: Oh, I understand, and you went so
17 far as to prepare a written statement for your
18 witness to read.

19 MR. LAKSHMANAN: No, this isn't a written
20 statement. It is prepared written remarks that he
21 would be able to make sure he had what he felt are
22 important points down as opposed to having done a

1 formal piece of testimony.

2 MR. FEIN: I'll cross-examine him on --

3 MS. READ: May I make a suggestion? Maybe the
4 Court Reporter could read it back slowly. That might
5 have been -- it went by quickly.

6 MR. FEIN: If I could ask maybe a couple
7 questions, maybe we can take care of this issue
8 regarding that statement.

9 EXAMINER JONES: A couple questions of?

10 MR. FEIN: Whether he prepared that, whether
11 the witness prepared that statement or whether it was
12 prepared by counsel.

13 EXAMINER JONES: Well, the objection is
14 overruled. I believe what's happening is consistent
15 with my understanding of what was indicated this
16 morning. I guess I don't know that we have any
17 access to this morning's record in terms of what that
18 understanding was, but I think that what is being
19 done now appears consistent with what was represented
20 this morning. If the questions are -- or the answers
21 are really long, then maybe we'll have to have them
22 read back by the Court Reporter at the appropriate

1 time, so. How many questions are there?

2 MR. LAKSHMANAN: I just have one on CILCO, so I
3 have one more question, and that's really to the
4 CILCO surrebuttal that was provided.

5 EXAMINER JONES: All right. So, Ms. Reporter,
6 perhaps if you could sort of flag the questions, and
7 if Mr. Fein would like to hear the answer read back,
8 I think that's a reasonable sort of middle ground
9 there. So we'll flag those answers, and if you want
10 those read back by the Court Reporter, just tell us,
11 and we'll have that done. If you need them read back
12 a couple times, we'll do it a couple times.

13 MR. FEIN: Okay.

14 MR. LAKSHMANAN: First a foundational question.

15 Q. Have you had an opportunity to read the
16 surrebuttal testimony filed by CILCO in this matter?

17 A. (Mr. Peters) Yes.

18 Q. Do you have any comments regarding
19 Ms. Lancaster's description of her meeting with Shawn
20 Schukar of Illinois Power's Transmission Services
21 Group?

22 A. (Mr. Peters) Yes. First, let me state

1 that neither Mr. Jones nor myself were present --

2 EXAMINER JONES: I think it would help if you
3 would at least go more slowly. I think that's kind
4 of part of the thing here, so if you'd go as slowly
5 as possible, that would be appreciated.

6 A. First, let me state that neither
7 Mr. Jones nor myself were present at this meeting and
8 as such cannot verify the accuracy of Ms. Lancaster's
9 description of what transpired. Additionally, my
10 comments only reflect my experience and understanding
11 of Illinois Power's business practices. The
12 statements which CILCO is referencing in their
13 testimony do not reflect a change in Illinois Power's
14 business practices. Rather, they reflect the
15 continued consistent application of the tariff.

16 Nothing in what I read in CILCO's
17 surrebuttal would lead me to change our statements
18 regarding the provision of planning reserves by a
19 RES. In fact, I believe her description of the
20 conversation actually supports this statement.
21 Illinois Power does not require that a RES supply
22 planning reserves. Rather, they require that a RES

1 or any other transmission customer secure a firm
2 resource, firm from source generator to customer load
3 sink, to obtain Network Integrated Transmission
4 Service.

5 As Ms. Lancaster points out, to secure
6 Network Integrated Transmission Service, the
7 transmission customer must point to a designated
8 resource. According to Ms. Lancaster, she asked
9 Mr. Schukar if the reason that the IP's NITS
10 application on page 9 included a description of
11 MAIN's planning reserve suggestion was "to indicate
12 that a RES must supply planning reserves." She then
13 states that "Mr. Schukar answered by saying that the
14 definition of a firm network resource is a
15 capacity-backed resource that is supplying reserves."

16 Mr. Schukar's comments, as stated by
17 Ms. Lancaster, are completely in line with the North
18 American Electric Reliability Council's definition of
19 firm energy. This definition is electrical energy
20 backed by capacity, interruptible only on conditions
21 as agreed upon by contract, system reliability
22 constraints, or emergency conditions and where the

1 supporting reserve is supplied by the seller. In
2 this situation, the most pertinent part of this
3 definition is the final statement - that the reserves
4 are held by the seller. In fact, CILCO highlighted
5 this last statement in their surrebuttal. The point
6 at issue is that CILCO is not the seller of the
7 resource which was being used as the designated
8 resource. Rather, they are the buyer. The seller
9 was Ameren Energy Services, the party from which
10 Ms. Lancaster states CILCO purchased the power from.
11 As such, Ameren Energy Services and not CILCO has the
12 obligation to hold reserves on this transaction. The
13 requirement to provide a firm resource in no way
14 compelled CILCO to purchase firm resources totaling
15 115 percent of their load requirement. They only
16 needed to purchase 100 percent of their load
17 requirement.

18 Since Illinois Power's proposed index is
19 already comprised of firm contracts, any adjustment
20 here would be double counting.

21 MR. LAKSHMANAN: Thank you.

22 We offer IP Exhibits 2.1, 2.2, 2.3, 2.4,

1 2.5, 2.6, 2.7, and 2.8 into the record.

2 EXAMINER JONES: Any objection to those
3 exhibits being admitted? All right. Let the record
4 show that there are not. IP Exhibits 2.1, 2.2, 2.3,
5 2.4, 2.5, 2.6, 2.7, and 2.8 are hereby admitted into
6 the evidentiary record.

7 (Whereupon IP Exhibit 2.1 through
8 2.8, inclusive, were received into
9 evidence.)

10 MR. LAKSHMANAN: And we would --

11 EXAMINER JONES: Off the -- I'm sorry. Go
12 ahead.

13 MR. LAKSHMANAN: I'm sorry. I was just going
14 to tender the panel for cross-examination.

15 EXAMINER JONES: Off the record briefly
16 regarding the point that came up a moment ago.

17 (Whereupon at this point in the
18 proceedings an off-the-record
19 discussion transpired.)

20 EXAMINER JONES: All right. Back on the
21 record.

22 I think there are two, maybe three parties

1 that have some cross-examination questions for the IP
2 panel, and, Mr. Robertson, I believe you said you're
3 going to lead off. Is that right?

4 MR. ROBERTSON: Yes, sir.

5 Are we ready?

6 EXAMINER JONES: I think we are.

7 CROSS EXAMINATION

8 BY MR. ROBERTSON:

9 Q. I guess I'd like to direct this question
10 to Mr. Jones. Well, let me ask -- maybe I better ask
11 this first. Which of the two panelists is primarily
12 responsible for the use of the Altrade and Bloomberg
13 data source in this case?

14 MR. LAKSHMANAN: I would just object on one
15 grounds, and I don't know what the rules are going to
16 be for panel witnesses. It's a panel due to the fact
17 that sometimes you need more than one person to help
18 provide something. I understand it may be primarily,
19 but I would not want to have both witnesses prevented
20 from adding what they believe to be appropriate
21 responses. That's all.

22 MR. ROBERTSON: Well, in that case I'll direct

1 the question to Mr. Jones.

2 MR. LAKSHMANAN: Same objection.

3 MR. ROBERTSON: I can't have -- I don't know
4 that it's fair to have two people come up and vote on
5 what kind of answers the panel is going to give. Now
6 I think I'm entitled to direct my question to one.
7 If on redirect they want to have somebody else
8 respond, I think that's okay, but I'm not sure what
9 the practicality is or the fairness of letting the
10 witnesses confer with one another about the
11 appropriate answer before they give it.

12 EXAMINER JONES: Any other comments on that
13 from other parties?

14 MR. FINDLAY: My only comment would be that
15 whatever rules we adopt for this panel I think we
16 ought to apply to the other two panels, and I tend to
17 agree with Mr. Robertson that we shouldn't have the
18 witnesses whispering to each other. I think a
19 witness should be permitted to say that's really not
20 -- I'm not the correct person to answer that
21 question, but that they should not be conferring
22 before responding to questions.

1 MR. ROBERTSON: If they want to refer it to the
2 other panelist, that's fine. That's okay with me
3 too.

4 MR. REVETHIS: That sounds to be appropriate.

5 EXAMINER JONES: All right.

6 MR. LAKSHMANAN: As long as the same rules
7 apply to everybody.

8 EXAMINER JONES: All right.

9 MR. LAKSHMANAN: I'm passing out, as you know,
10 the copies that were made. As I said before, there
11 are no representations or warranties that this is
12 exactly how it was stated on the record.

13 (Pause in the proceedings.)

14 MR. ROBERTSON:

15 Q. Okay, Mr. Jones. I'd like to refer you
16 to page 6 of IP Exhibit 2.1, your direct testimony,
17 question and answer number 10. In the first sentence
18 of that answer you state or the panel states, "Rider
19 MVI will provide for the determination of monthly on-
20 peak market prices from electronic exchanges (Altrade
21 and Bloomberg PowerMatch) and a published survey
22 (Power Markets Week) that are accessible to market

1 participants." Is that correct?

2 A. (Mr. Jones) Yes.

3 Q. Now do you have a copy of the company's
4 -- strike that. I should have directed this to
5 Mr. Peters. It is Mr. Peters' data response.

6 Mr. Peters, do you have a copy of IP's
7 response to IIEC's First Data Requests, Item Number
8 13?

9 A. (Mr. Peters) Yes.

10 Q. Now, with regard to accessibility, it's
11 my understanding that the response to the company to
12 the question of how the ICC Staff or other interested
13 parties, but not a power purchaser or seller, can
14 access the Altrade trading screen and the Bloomberg
15 PowerMatch historical database to review the service
16 and resulting data, that was the question that was
17 asked in the data request. Is that correct?

18 A. (Mr. Peters) Yes.

19 Q. And the company responded by saying that
20 it is not certain to Illinois Power that the
21 historical databases for both Bloomberg and Altrade
22 are restricted to wholesale participants as the

1 actual trading systems are. Is that correct?

2 A. (Mr. Peters) Yes.

3 Q. Now I take it to mean that the actual
4 trading systems in Altrade and Bloomberg are
5 available only to wholesale participants. Is that
6 correct?

7 A. (Mr. Peters) That is my current
8 understanding, yes.

9 Q. And I understand that IP, based on this
10 answer, that IP does not know or is not certain as to
11 whether or not the historical databases are
12 restricted to only wholesale participants. Is that
13 correct?

14 A. (Mr. Peters) Yes.

15 Q. All right. Now the rest of the company's
16 response relates to IP's willingness to encourage, to
17 the extent possible, facilitation of discussions
18 between interested parties and the Altrade/Bloomberg
19 services to make a read-only access available. Is
20 that correct?

21 A. (Mr. Peters) Yes.

22 Q. Now would you also agree that, at least

1 at the current time, in the absence of such
2 discussions and their successful conclusion, that
3 read-only access is not available?

4 A. (Mr. Peters) That's my current
5 understanding, yes.

6 Q. Thank you.

7 Now, Mr. Peters, do you believe that
8 Altrade and Bloomberg electronic exchanges are
9 markets?

10 A. (Mr. Peters) Without knowing the
11 definition of market as you intended, I believe they
12 are representations of the market. They are
13 exchanges.

14 Q. Is the New York Stock Exchange a market
15 or is it a representation of a market?

16 A. (Mr. Peters) Without knowing the
17 definition of market which you intended, I believe
18 it's a representation of the market. It is an
19 exchange.

20 Q. Now would you look at Illinois Power's --
21 and, again, I think you are the person who provided
22 this response, the response to IIEC's First Data

1 Request, Item Number 17. Do you have that in front
2 of you?

3 A. (Mr. Peters) Yes.

4 Q. Now in that data response the company was
5 asked to list all other market data sources
6 considered by IP and explain why IP favored the
7 Altrade and Bloomberg PowerMatch and McGraw-Hill
8 market data sources. Is that correct?

9 A. (Mr. Peters) Yes.

10 Q. Now as part of that answer, in the last
11 sentence of that answer you make the statement that
12 IP does not believe that it is appropriate to include
13 data sources that are heavily dominated by single
14 participants, particularly in light of the concerns
15 of some parties regarding market manipulation. Is
16 that correct?

17 A. (Mr. Peters) Yes.

18 Q. Why does IP believe it is inappropriate
19 to include the data sources that are heavily
20 dominated by single participants?

21 A. (Mr. Peters) Our intent in developing our
22 data sources for MVI was to get as much of a

1 consensus representation of the market from as many
2 participants as possible. What we did not want to go
3 down the road of was to only represent a single
4 party's view of the market. We feel it basically has
5 a potential for unduly biasing the market in one
6 direction or the other, though we don't have any
7 evidence that that's ever occurred.

8 Q. Are you familiar with anything that's
9 gone on in California recently? With regard to the
10 electric markets there. Sorry. That's a billion
11 question, wasn't it?

12 MR. FINDLAY: Emmy Awards, for example.

13 Q. With regard to the electric markets in
14 California.

15 A. (Mr. Peters) To the extent that I've read
16 some various news articles, yes.

17 Q. Are you familiar with the fact that some
18 people believe that the prices that have been seen in
19 California are due to market manipulation in part?

20 A. (Mr. Peters) I believe I've read that
21 reference.

22 Q. So it is possible that electric markets

1 can be manipulated. Is that correct? Do you agree
2 with that?

3 A. (Mr. Peters) I don't believe it's
4 impossible.

5 Q. Now would you turn to page 11 of your
6 direct testimony, and on my copy it's lines 219 to
7 220, but it's question and answer number 19, and
8 there's a sentence on my copy at lines 119 to 220
9 that reads "The predominant contract which is traded
10 is for the 5x16, on-peak period." Do you see that?

11 A. (Mr. Peters) Yes.

12 Q. Now how often is an around-the-clock or
13 off-peak contract posted?

14 A. (Mr. Peters) In my experience and my
15 limited observation of Altrade, it's a very
16 infrequent posting.

17 Q. Are there any other types of contracts
18 posted?

19 A. (Mr. Peters) Yes.

20 Q. How often are they posted?

21 A. (Mr. Peters) If the reference is in other
22 than the 5x16 on-peak or the around-the-clock, again,

1 infrequently in my experience.

2 Q. That's the next question. What's the
3 basis? What is your experience?

4 A. (Mr. Peters) With Altrade specifically?

5 Q. With Altrade and your experience in this
6 area generally.

7 A. (Mr. Peters) My experience with Altrade
8 is limited to Illinois Power Company gaining access
9 to this early in 1999. I'm sorry. Yes, early in
10 1999. No, I'm sorry; it was early 2000, in
11 conjunction with the presentation of Altrade as an
12 alternative within the ComEd filing. In that
13 context, I've made a sample for Illinois Power
14 Company's examples, which is a ten-day period in
15 early this year, and from that I periodically will
16 bring the system up and observe it. It is not
17 extensive, and I do not trade on it.

18 Q. Has -- and I don't know if you are --
19 I'll open this one also to Mr. Jones if he knows --
20 has Illinois Power had difficulty getting information
21 from Altrade for the purposes of making its
22 presentation in this case?

1 A. (Mr. Peters) For the examples which I've
2 prepared I did not have a need to directly contact
3 Altrade. I don't know if other people have tried to
4 contact them for another purpose.

5 Q. All right. How about you, Mr. Jones?

6 A. (Mr. Jones) I have no experience in
7 contacting Altrade.

8 Q. Okay. Now, let's go to your rebuttal
9 testimony, if we may, please. I'd like to refer you
10 to page 2, last line on the bottom of the page, and
11 the top of page 3, and there's a sentence there that
12 begins "Should a significant number of trades begin
13 to be reported outside of the normal bounds of the
14 real market, it would be noticed and inquiries would
15 follow." Do you see that sentence?

16 A. (Mr. Peters) Yes.

17 MR. LAKSHMANAN: I would just like to note that
18 the word real is in quote marks.

19 MR. ROBERTSON: Yes, it is. That was one of my
20 questions.

21 Q. What do you mean by real, the real
22 market?

1 A. (Mr. Peters) The real market, my intent
2 in that statement reflects an individual
3 participant's perception of value within the market.

4 Q. Okay. So what you're really saying in
5 this sentence is if it's outside the normal bounds of
6 what the individual looking at it thinks is the real
7 market, it would be noticed and inquiries would
8 follow. Is that correct?

9 A. (Mr. Peters) I believe that's a fair
10 characterization.

11 Q. Now, for example, if there was a forward
12 transaction at a price that was not considered
13 typical or normal by the person looking at the
14 information, you think that person would notice it
15 and that some inquiry would follow. Is that correct?

16 A. (Mr. Peters) Yes. In my experience, when
17 I traded and we noticed ranges being reported outside
18 of ranges that we actually experienced, we would call
19 and challenge the surveys.

20 Q. Would it be necessary for there to be
21 more than one actual trade for a particular forward
22 product before you would determine it to be atypical

1 or abnormal?

2 A. (Mr. Peters) Not necessarily. It's a
3 scope issue to me, how far out of normal did we think
4 that single trade was.

5 Q. All right. Would you normally -- would
6 you look at the number of times that had occurred,
7 like 2 or 5 or 10 or 50 or 100, before you would
8 consider it abnormal?

9 A. (Mr. Peters) In my experience, I traded
10 short term, and if it was a large enough difference
11 on a given day, we wouldn't look for a trend.
12 However, we have also challenged issues where we felt
13 there was a protracted trend of something being
14 reported above or below market.

15 Q. Now at this time would you agree that no
16 one on the Illinois Commerce Commission Staff is
17 entitled to look at this data to determine whether or
18 not it's outside the normal bounds of a real market?

19 MR. LAKSHMANAN: I object to the extent he
20 knows what the ICC Staff arrangements are with these
21 individuals.

22 MR. ROBERTSON: Strike it. I'll restate it.

1 Q. It was your testimony before that you are
2 uncertain as to whether or not the historical data
3 was available and the trading systems are unavailable
4 to anyone who was not a participant. Is that
5 correct?

6 A. (Mr. Peters) On a direct subscription,
7 yes.

8 Q. Do you know whether or not the Staff of
9 the Illinois Commerce Commission has a direct
10 subscription?

11 A. (Mr. Peters) I have no way of knowing
12 that.

13 Q. One could not -- let me try it a
14 different way then. Would you agree that unless you
15 purchase an actual subscription or unless Altrade and
16 Bloomberg volunteers to let you look at the
17 historical data, you would have no way to notice
18 whether or not a particular price or transaction was
19 outside the normal bounds of the real market?

20 A. (Mr. Peters) To the extent that a
21 participant had an affiliate that had access, they
22 could gain access from that method.

1 Q. Are you saying that affiliates can
2 exchange information with affiliated companies on
3 this type of situation?

4 A. (Mr. Peters) No, sir. What I'm saying is
5 that on the basis of our affiliation with Dynegy
6 Marketing Trade, I was able to gain read-only access
7 to Altrade.

8 Q. Okay. This is a simplistic question, but
9 I think it illustrates my example. If Lueders,
10 Robertson and Konzen wanted to purchase electricity
11 for its own account, in the absence of buying a
12 subscription, there would be no way for Lueders,
13 Robertson and Konzen to know whether or not a
14 particular transaction was outside the bounds of the
15 normal -- of the real market. Is that correct?

16 A. (Mr. Peters) If the firm had a power
17 marketing license, I do not believe that there is a
18 subscription fee for the actual trading service.

19 Q. So I'd have to get a power marketing
20 license from the Federal Energy Regulatory
21 Commission. Correct?

22 A. (Mr. Peters) My current understanding is

1 that Altrade requires you to be a qualified market
2 participant.

3 Q. How many customers on the IP system are
4 likely to become power marketers so they can get
5 access to this information?

6 A. (Mr. Peters) I don't know.

7 Q. Well, how many would you anticipate based
8 on your experience?

9 A. (Mr. Peters) A few.

10 Q. The majority of customers will not. Do
11 you agree with that?

12 A. (Mr. Peters) Correct.

13 Q. Would you look at lines 41 and 43, which
14 I think is the next sentence? There is a sentence
15 that begins and reads "If evidence of fraudulent
16 trades exist, parties could approach various law
17 enforcement bodies to request an investigation." Do
18 you see that?

19 A. (Mr. Peters) Yes.

20 Q. Could two parties in a bilateral
21 arrangement agreeing to a price for power, or any
22 product for that matter, that is outside the bounds

1 of the real market -- strike that.

2 If two parties to a bilateral arrangement
3 agreed to a price for power that is outside the
4 bounds of what you consider to be the real market,
5 would that constitute fraud?

6 A. (Mr. Peters) I'm not an attorney. I
7 don't believe I have the basis to answer that
8 question.

9 Q. Could two parties willingly agree to a
10 bilateral trade of power at a price that differs from
11 what you consider to be the real market in
12 consideration of a separate agreement for non-power
13 related products or services?

14 A. (Mr. Peters) Obviously, yes.

15 Q. Could two parties agree that one of them
16 will sell to the other forward power for two
17 different months and only conduct one of the
18 transactions via an electronic exchange?

19 A. (Mr. Peters) Unlikely.

20 Q. But they could do it?

21 A. (Mr. Peters) It's not outside the realm
22 of possibility, but I believe it's highly unlikely.

1 Q. Would it constitute fraud if they did it?

2 A. (Mr. Peters) Again, I'm not an attorney.

3 I don't know what the basis for fraud is.

4 Q. Could these two parties -- in the
5 transaction that I just described about the forward
6 power for two months, could the prices of the two
7 transactions depend on one another?

8 MR. LAKSHMANAN: You say the prices of --

9 Q. Well, let me give you an example. The
10 first party promises to sell the power at \$50 a
11 megawatt in July -- strike that.

12 The first party promises to sell 50
13 megawatts of power in July for \$100, and the other
14 party, in return, agrees to buy 50 megawatts of power
15 in September at the same \$100. Is that possible?

16 A. (Mr. Peters) Is your question on the
17 exchange or off the exchange?

18 Q. On the exchange.

19 A. Again, I believe it's highly unlikely, as
20 the participants are not known to each other prior to
21 execution, and so if they were to post those prices,
22 it's not certain that they would be automatically

1 matched up with who they made the off-exchange
2 agreement with. I find that greatly improbable.

3 Q. Are the electronic exchanges used in the
4 IP proposal regulated by state or federal government?

5 A. (Mr. Peters) I don't know if they have
6 specific regulation.

7 Q. All right. Is the publication of the
8 information contained in IP's third on-peak data
9 source, Power Markets Week, regulated by the state or
10 federal government?

11 A. (Mr. Peters) Could you clarify? Is the
12 publication subject to any regulation or specifically
13 to which part?

14 Q. The gathering of the data and the
15 publication of the data.

16 A. (Mr. Peters) I don't know the specific
17 answer to that.

18 Q. Now at page 3, lines 57 to 58, you make
19 the statement "The utility may have engaged in a
20 long-term resource -- strike that. "The utility may
21 have engaged in long-term resource planning with the
22 expectation of reduced supply requirements." Do you

1 see that?

2 A. (Mr. Peters) Yes.

3 Q. Now do you know whether or not IP,
4 Illinois Power, has engaged in such planning?

5 A. (Mr. Peters) Illinois Power Company has
6 certain confidential, long-term planning that is
7 performed, and it has certain planning which is
8 performed and provided to bodies such as the ICC and
9 to the MidAmerican Interconnected Network.

10 Q. My specific question was whether or not
11 they've engaged in long-term resource planning with
12 the expectation of reduced supply requirements.

13 MR. LAKSHMANAN: To the extent that it's
14 requesting confidential information, we'd object
15 until we had a confidential agreement in place. To
16 the extent it doesn't call for that, then obviously
17 the witness can answer here on the stand.

18 MR. ROBERTSON: Okay. I'm not following. I'm
19 only asking whether or not they've done it. I
20 haven't asked him what the results are.

21 A. (Mr. Peters) I'll defer to Mr. Jones.

22 A. (Mr. Jones) Yes.

1 Q. Over what time period does that planning
2 occur?

3 MR. LAKSHMANAN: Again, same objection, to the
4 extent that it doesn't call for confidential
5 information.

6 A. (Mr. Jones) From the current period
7 through 2004.

8 Q. Would you agree or disagree that Illinois
9 Power made a major effort prior to October 1 , 1999 to
10 sign customers up to five-year contracts prior to the
11 advent of open access?

12 MR. LAKSHMANAN: Objection on the ground of
13 relevance. In addition, I object on the ground that
14 it seeks confidential information.

15 MR. ROBERTSON: Well, the relevance is the
16 witness or the witnesses are talking about whether or
17 not, given the limited liquidity of the market,
18 private trades would be diluted by observations of
19 other trades included in the averaging process, and
20 they say they don't agree with that statement.
21 That's at page 2, lines 21 to 25. Now as part of
22 their disagreement they're explaining why they

1 disagree, and I'd like to know whether their
2 disagreement is theoretical or whether their
3 disagreement is actually based on something IP has
4 done or is doing.

5 MR. LAKSHMANAN: I don't believe at any point
6 do they raise IP's competitive services contracts.

7 MR. ROBERTSON: They said that IP has engaged
8 in long-term resource planning with the expectation
9 of reduced supply over a horizon of from now until
10 2004, and, quite frankly, I have some difficulty
11 accepting that.

12 MR. LAKSHMANAN: And they also tie that to the
13 incumbent bundled service in previous statements, not
14 competitive contract services which are not regulated
15 by the Commission.

16 MR. ROBERTSON: These contracts were entered
17 into before there was any customer choice whatsoever,
18 and they are equivalent to bundled service, and I
19 think it's a relevant question to know whether or not
20 IP really expects to see any reduced supply
21 requirements.

22 MR. LAKSHMANAN: I don't believe that --

1 different parties believe or dispute your assertion
2 that they are equivalent to the bundled service. In
3 fact, I believe in other proceedings that's not where
4 the Commission appears to be coming down on those,
5 but we'll have to wait for the final orders.
6 Nonetheless, that's not being discussed here .

7 EXAMINER JONES: You mentioned an objection
8 relating to confidentiality. I'm not sure I follow
9 you there. What are you saying?

10 MR. LAKSHMANAN: The competitive service
11 contracts all have confidentiality clauses in them,
12 and I would be concerned, again, to the extent that
13 we're getting into confidential information without
14 having a protective order in place, I would be
15 concerned about discussing those things.

16 EXAMINER JONES: I don't think the question
17 that was asked really kind of gets into that much
18 specificity. Just to move things along, I'm going to
19 allow the question, so the objection is overruled.
20 This is sort of a borderline link to the witness's
21 testimony that's cited as giving rise to this
22 question, but it's also somewhat preliminary sounding

1 in nature, so it's allowed.

2 MR. ROBERTSON:

3 Q. Do you remember the question, Mr. Jones?

4 Because I'm not sure I do.

5 A. (Mr. Jones) I'd like to have it back,
6 please.

7 Q. All right. I'm afraid I'll get another
8 objection. I'll try to state it again, if I can
9 remember it.

10 Is it correct that prior to October 1,
11 1999, that Illinois Power made a substantial effort
12 to sign customers up to long-term supply contracts?
13 And by long term I mean at least five years.

14 MR. LAKSHMANAN: And by substantial?

15 Q. That IP made an effort to sign customers
16 up to long-term supply contracts, and by long term I
17 mean through 2004.

18 A. (Mr. Jones) I'm aware of an effort to
19 sign customers up to a contract. Some of the
20 contracts may have gone through the period you
21 discussed, through 2004.

22 Q. Okay. And is it also true that Illinois

1 Power -- strike that.

2 Now, do you know, do you have any idea of
3 the magnitude of those contracts, and by magnitude I
4 mean the number of customers that were signed up?

5 MR. LAKSHMANAN: Again, objection on the
6 grounds of confidentiality and relevance.

7 MR. ROBERTSON: Let me ask the other question.
8 You can object to it too, and we'll get it out of the
9 way at the same time.

10 Q. The next question is, do you know in
11 order of magnitude the number of megawatts that were
12 involved?

13 MR. LAKSHMANAN: Same objection.

14 EXAMINER JONES: Run that confidentiality
15 objection by me again.

16 MR. LAKSHMANAN: These contracts and customer
17 data that underlies them is confidential. I mean
18 there's a clause in each of these contracts, and we
19 would be concerned with divulging information
20 relating to those contracts. In fact, part of the
21 Neutral Fact Finder process requires that they be
22 kept confidential by all parties.

1 MR. ROBERTSON: I want to assure
2 Mr. Lakshmanan, to the extent it will make any
3 difference, I don't intend to ask about any
4 particular customer or contract. I'm more concerned
5 with the aggregate total in terms of customers and
6 the number of megawatts, if the witness knows.

7 EXAMINER JONES: Are you saying that's --

8 MR. LAKSHMANAN: I wasn't sure where he was
9 headed with that so I wanted to make sure that we had
10 our confidentiality objection out there. We also
11 continue on the relevancy.

12 EXAMINER JONES: All right, but does that
13 clarification satisfy sort of the confidentiality
14 aspect of your objection?

15 MR. LAKSHMANAN: At least to the extent that
16 those are the questions that have been asked.

17 EXAMINER JONES: So it's essentially the same
18 objection, so the ruling will be the same. So to the
19 extent the witnesses are able to answer that, that
20 question, please do so.

21 A. (Mr. Peters) I don't know the exact
22 amount which was signed up under that. What I am

1 aware of is that there is still substantial
2 proportions of IP's load eligible for choice which is
3 not under contract through 2004. In fact, if we had
4 everybody under contract through 2004, I don't see
5 where there would be a need for the proceeding
6 because we'd have nothing at risk.

7 Q. You mean if you had 100 percent of your
8 customers -- well, first of all, I want to strike
9 everything after I don't know as being nonresponsive
10 because I asked specifically about the quantity in
11 terms of numbers of customers and numbers of
12 megawatts, and the witness said he didn't know and
13 then offered some additional opinion after that.

14 EXAMINER JONES: A response? Okay.

15 Could you read the answer back,
16 Ms. Reporter, and we'll sort of see where the break -
17 point is there.

18 (Whereupon the requested portion of
19 the record was read back by the
20 Court Reporter.)

21 MR. LAKSHMANAN: I believe he was attempting to
22 --

1 EXAMINER JONES: I'm sorry. You sort of had
2 your opportunity. The objection is sustained, and
3 the words "in fact" to the conclusion of that answer
4 are sustained -- or are stricken I should say.

5 MR. ROBERTSON:

6 Q. Mr. Jones, in the long-term resource
7 planning process would you anticipate that a utility
8 in Illinois, given the obligation to continue to
9 provide unbundled service and given the obligation to
10 offer PPO service, would include in its planning
11 expectations about the number of customers who would
12 take those services and the load that they might be
13 associated with?

14 A. (Mr. Jones) Yes.

15 Q. Now, would you look at the last sentence
16 at the bottom of page 3 that begins "They are now
17 faced with the need to reacquire these resources at
18 prevailing market rates, which may be substantially
19 higher than the cost of the previously released
20 resources." Does the panel have that in front of
21 them?

22 A. (Mr. Jones) Yes.

1 A. (Mr. Peters) Yes.

2 Q. Now, which one of you was responsible for
3 this portion of the testimony?

4 A. (Mr. Peters) I am.

5 Q. Okay. What did you mean by the term
6 prevailing market rates?

7 A. (Mr. Peters) The market rates which are
8 applicable to the period at which the utility is
9 required to reacquire the resource.

10 Q. Would you assume that this rate is
11 established in a competitive market?

12 A. (Mr. Peters) Yes.

13 Q. What would be the elements of such
14 competitive market, in your opinion?

15 A. (Mr. Peters) It would be dependent upon
16 the resources which are needed to be reacquired.

17 Q. So the market would be defined by the
18 resources to be reacquired. Is that correct? The
19 competitive market?

20 A. (Mr. Peters) The contract which would be
21 executed, the components of that would be, you know,
22 dependent upon the type of resources that were needed

1 to be acquired at that time.

2 Q. Okay. I'm not asking you -- okay. Maybe
3 I misunderstood your prior answer. You told me what
4 you thought the prevailing market rate meant, and
5 you've told me that you've assumed that this rate
6 would be established in a competitive market. Is
7 that correct?

8 A. (Mr. Peters) Correct.

9 Q. And my question to you is, what are the
10 elements of that competitive market?

11 A. (Mr. Peters) Without knowing the exact
12 definition of market as you intend, I took it to mean
13 the market for the specific contract to supply the
14 exact resources that the utility was seeking to
15 acquire.

16 Q. Okay. Under your scenario here could the
17 utility buy long-term resources?

18 A. (Mr. Peters) If that was suitable to
19 their needs, yes.

20 Q. Could they buy short-term resources?

21 A. (Mr. Peters) If it was suitable to their
22 needs, yes.

1 Q. Could they buy some combination of long-
2 term and short-term resources?

3 A. (Mr. Peters) If it was suitable to their
4 needs, yes.

5 Q. Could monthly forward contracts be among
6 the resources acquired?

7 A. (Mr. Peters) Yes.

8 Q. So would you agree that in that sense the
9 market is composed of multiple types of products,
10 long-term, short-term, and combinations of long-term
11 and short-term in our hypothetical?

12 A. (Mr. Peters) Yes.

13 Q. Do you believe that long-term resources
14 would be priced at the same level as short-term
15 resources?

16 A. (Mr. Peters) No.

17 Q. Could forward contracts be priced
18 differently from one contract to another?

19 A. (Mr. Peters) Yes.

20 Q. And they could be -- would you agree that
21 they could be priced differently than the cost of the
22 long-term or short-term resource?

1 A. (Mr. Peters) Is your reference to the
2 contracts in aggregate or only for the specific time
3 period?

4 Q. Well, in aggregate first and then for the
5 specific time period second.

6 A. (Mr. Peters) Could you repeat the
7 question?

8 Q. The question was could forward contracts
9 be priced differently than a long-term or short-term
10 resource?

11 A. (Mr. Peters) Yes.

12 Q. Now, could you look at lines 68 to 70 of
13 page 4? There you have a sentence that states "Under
14 this condition the TCs are too low, the utility is
15 subsidizing competition, and it would not be expected
16 that many customers would choose the higher cost PPO
17 alternative." Is that correct?

18 A. (Mr. Peters) Yes.

19 Q. What do you mean by -- well, strike that.
20 Would you expect the market for
21 electricity in Illinois to more fully develop once
22 the transition charge period is over?

1 A. (Mr. Peters) Is your reference to the
2 wholesale market in aggregate?

3 Q. Let's talk about the wholesale market
4 first.

5 A. (Mr. Peters) I'm not sure I believe I
6 have a basis to make a comment on it.

7 Q. Would you anticipate that the retail
8 market will develop more fully once the transition
9 charge period is over?

10 A. (Mr. Peters) I'm not sure I believe I
11 have a basis to make a comment on that.

12 Q. Do you have an opinion as to whether or
13 not the transition charge in and of itself will
14 promote or promotes or hinders the development of a
15 competitive market at the wholesale or the retail
16 level?

17 A. (Mr. Peters) To the extent that the TC
18 represents an accurate value, I don't believe that it
19 neither hinders nor promotes competition.

20 Q. Well, if a customer was paying the rate
21 of 5 cents a kWh and the market value that the
22 customer could buy the power at out on the market was

1 4.6 cents, does the existence of the transition
2 charge promote or hinder the development of
3 competition?

4 MR. LAKSHMANAN: Objection to the extent that
5 the hypothetical contains sufficient facts for him to
6 answer.

7 MR. ROBERTSON: The witness hasn't -- I mean he
8 may now, but he hadn't yet.

9 Q. Do you understand the question?

10 A. (Mr. Peters) Is there an objection on the
11 floor?

12 EXAMINER JONES: No, there was not an
13 objection. Please answer the question, if you can.

14 A. (Mr. Peters) If it's referencing to would
15 more people select choice.

16 Q. Yes.

17 A. (Mr. Peters) Yes, they would.

18 Q. And do you agree or disagree with the
19 idea that the more people that select choice, the
20 more competitors we'll have in Illinois?

21 A. (Mr. Peters) That may be true.

22 Q. And the more competitors we have, the

1 more competition we'll have. Do you agree with that?

2 A. (Mr. Peters) That may be true.

3 Q. And therefore in my hypothetical the
4 existence of the transition charge, to the extent
5 that it keeps people from making choice, would
6 adversely impact the development of competition in
7 the retail market, would it not?

8 A. (Mr. Peters) Only if it's assumed that
9 the elimination of TCs didn't destroy the financial
10 integrity of certain people that are offering choice.

11 Q. Well, wait a minute. Illinois Power has
12 gotten rid of all its generation, hasn't it?

13 MR. LAKSHMANAN: Objection on the grounds of
14 relevance.

15 MR. ROBERTSON: I'll demonstrate the relevance
16 in a second.

17 EXAMINER JONES: Based on the representation by
18 Mr. Robertson that he will tie it up, we'll leave the
19 question in, and please answer it, if you can.

20 Q. Haven't they?

21 A. (Mr. Peters) Illinois Power has divested
22 its generation, yes.

1 Q. It's essentially a wires company now.
2 Isn't that correct?

3 A. (Mr. Peters) It's a T&D company, yes.

4 Q. And to the extent a T&D company doesn't
5 own any generation, whether or not costs associated
6 with that generation are recovered won't make any
7 difference to its financial viability, will it?

8 A. (Mr. Peters) I don't know.

9 Q. What's your best guess?

10 A. (Mr. Peters) I don't know.

11 Q. If a company doesn't have responsibility
12 for paying except through a contract for paying for
13 the cost of operation -- strike that.

14 Do you agree or disagree that in a
15 competitive market, attempting to protect the
16 financial viability of a single competitor can have
17 adverse impacts on the development of competition and
18 the rest of the market?

19 A. (Mr. Peters) Yes.

20 Q. Isn't the transition charge an attempt
21 to, in part, protect the financial viability of
22 Illinois Power, for example?

1 A. (Mr. Peters) I wasn't there when the
2 statute was developed. I don't know what that actual
3 intent is.

4 Q. What do you mean by subsidize competition
5 at the top of -- strike that.

6 What do you mean by subsidize competition
7 or subsidizing competition at line 69 at page 4?

8 A. (Mr. Peters) To the extent that the
9 utility is collecting a rate lower than it is
10 statutorily entitled to, the difference between that
11 rate and the actual rate which it is collecting, in
12 my mind, is a credit being provided to the balance of
13 the marketplace and lowers the cost at which --
14 against which they have to compete.

15 MR. ROBERTSON: Could the Reporter read that
16 back to me, please?

17 (Whereupon the requested portion of
18 the record was read back by the
19 Court Reporter.)

20 Q. Would you agree that the converse of that
21 is true to the extent that a customer is required to
22 pay a rate above the market rate at which he could

1 buy electricity, that that difference represents a
2 subsidy?

3 MR. LAKSHMANAN: Object to the extent that
4 you're implying that that's the converse of what he
5 said.

6 Q. Would you agree that that's the converse
7 of what you said?

8 A. (Mr. Peters) Could you repeat the
9 question, please?

10 MR. ROBERTSON: Could you read it back for me,
11 please?

12 (Whereupon the requested portion of
13 the record was read back by the
14 Court Reporter.)

15 MS. READ: Could I ask that that be read back
16 again?

17 (Whereupon the requested portion of
18 the record was read back by the
19 Court Reporter.)

20 MS. READ: I know this is not my witness, but I
21 am going to object as vague and ambiguous. A
22 regulated rate for what? It's not defined.

1 MR. ROBERTSON: I have to tell you I don't
2 understand the objection.

3 MS. READ: Well, you asked if the utility is --
4 if a customer is paying more --

5 MR. ROBERTSON: Than the market requires.

6 MS. READ: No, under a regulated rate, than a
7 market price for electric power and energy. I mean
8 bundled rates? What costs are in the rates? Is the
9 utility recovering its costs? To me it's a very
10 confusing question. I'm sorry, but I really don't
11 understand.

12 MR. ROBERTSON: I didn't ask him anything about
13 the regulated rate. That's why I didn't understand
14 your objection. I asked him whether or not it would
15 be true to say that if a customer was required to pay
16 a rate for electricity that was in excess of the
17 market required rate, would he consider that to be a
18 subsidy also.

19 Q. Can you answer that question?

20 A. (Mr. Peters) Within the context of not
21 knowing the purpose of -- the exact purpose of
22 transition charges in the statute, I'm not sure that

1 I agree with that statement.

2 Q. I didn't ask you about transition
3 charges, and, quite frankly, I'm asking you whether
4 or not you would agree or disagree that to the extent
5 customers are required to pay rates in excess of what
6 the market would require them to pay, they are
7 providing a subsidy.

8 MR. LAKSHMANAN: And I believe he's attempting
9 to clarify the fact that he's not sure whether you're
10 including TCs in that or excluding them, and --

11 MR. ROBERTSON: I don't think -- it's a simple
12 question. I don't think I have to add anything to
13 it. I think it's pretty straightforward.

14 MR. LAKSHMANAN: And I believe he has answered
15 the question to the extent he could.

16 MR. ROBERTSON: He's throwing something in
17 there about not understanding the purpose of
18 transition charges, and I don't think you need to
19 understand the purpose of transition charges in order
20 to answer that question.

21 EXAMINER JONES: I think the witness has
22 attempted to answer the question. You can certainly

1 follow up on that if you want. I'm really not sure
2 if you want to direct the witness to answer the
3 question as part of the answer that he -- in that
4 particular situation.

5 MR. ROBERTSON: Let's leave aside transition
6 charges for a minute. Let's just talk about
7 philosophy. Okay?

8 Q. Would you agree or disagree that if the
9 market rate for electricity was 2 cents and the
10 customer was required to pay 3 cents, the customer
11 would be providing a subsidy similar to the type of
12 subsidy you're referring to here?

13 A. (Mr. Peters) It's unclear to me who
14 they're subsidizing in your question.

15 Q. They're subsidizing the seller of the
16 electricity at 3 cents.

17 A. (Mr. Peters) Without knowing the nature
18 of the contract or the tariff which required them to
19 pay the rate, I'm not prepared to answer. I don't
20 have an answer for that.

21 Q. Why would you need to know those things
22 to answer my question?

1 A. (Mr. Peters) I don't know the terms of
2 the contract. I don't know the situation in which
3 the contract was developed, if it simply represents
4 the ability of one party to out-negotiate another.
5 None of those were clear in your question.

6 Q. Okay.

7 Let's suppose that the customer as a
8 matter of law was required to pay the provider 3
9 cents when the market rate was 2 cents. Would a
10 subsidy exist in that instance? It didn't have
11 anything to do with negotiating a contract. If the
12 customer could have, he would have bought it at the
13 market rate.

14 A. (Mr. Peters) Without knowing the basis of
15 which the law is established, again, I'm not ready to
16 characterize that as a subsidy.

17 Q. Why do you need to know the basis for the
18 establishment of the law? What difference does it
19 make?

20 A. (Mr. Peters) I believe that the law and
21 regulation by its very nature has imposed certain
22 costs upon providers which may be reflected in a

1 regulated tariff rate which may not be appropriate in
2 the market.

3 Q. What if the customer was buying an energy
4 only product and no other services from the provider?
5 All he wanted to do was buy electricity at 2 cents,
6 but the law required him to buy it at 3 cents from
7 this provider. Would a subsidy exist in that
8 circumstance?

9 A. (Mr. Peters) I believe my answer to the
10 prior question stands on this also.

11 Q. Even if the 3 cents only included the
12 price of energy, no other costs?

13 A. (Mr. Peters) Without knowing whether or
14 not there's cross-subsidization occurring within the
15 regulated tariffs, I'm not prepared to characterize
16 that as a subsidy.

17 MR. ROBERTSON: Read the answer back, please.

18 (Whereupon the requested portion of
19 the record was read back by the
20 Court Reporter.)

21 Q. So do you know the basis for the
22 transition charge in this law, in the new customer

1 choice and rate relief law that is the subject of
2 this proceeding? I think you've already said you do
3 not. Is that correct?

4 A. (Mr. Peters) I believe I said I was not
5 present, and I'm not aware what the entire intent
6 was.

7 Q. You told me or am I incorrect that you
8 don't know what the basis for the transition charges
9 are?

10 MR. LAKSHMANAN: I believe he said the intent
11 --

12 EXAMINER JONES: That's a question,
13 cross-examination question. Answer the question, if
14 you can.

15 A. Repeat the question, please.

16 MR. ROBERTSON: Read it back for him, please.

17 (Whereupon the requested portion of
18 the record was read back by the
19 Court Reporter.)

20 A. (Mr. Peters) Yes.

21 Q. All right. So you don't really know,
22 since you don't know what the transition charge or

1 the basis for transition charges are, you don't
2 really know whether or not there's any subsidy in
3 competition in your example at line 68 to 70. Isn't
4 that correct?

5 A. (Mr. Peters) I wouldn't agree with that.

6 Q. Do you have to know what the basis for
7 transition charges are in order to provide your
8 response here?

9 A. (Mr. Peters) The response is predicated
10 on knowing that the statute allows the utility to
11 collect a transition charge.

12 Q. All right. In my example let's assume
13 the legislature allows the seller of the electricity
14 to collect the difference between the market rate and
15 the 3 cents. Wouldn't the customer be subsidizing
16 competition in that example?

17 A. (Mr. Peters) No.

18 Q. Why not?

19 A. (Mr. Peters) Because the customer is
20 paying a rate above market. Therefore, they would
21 not be subsidizing competition.

22 Q. So it's only when you pay a rate below

1 market that competition is subsidized, not when you
2 pay a rate above market. Is that correct?

3 A. (Mr. Peters) When the utility subsidizes
4 competition, it's to the extent that they are
5 collecting a rate below that which they are
6 statutorily entitled to.

7 Q. But it is not -- just to make sure I
8 understand, in your opinion, it is not the customer
9 subsidizing competition when he has to pay a rate
10 above the market rate he would otherwise be entitled
11 to. Is that correct?

12 A. Yes.

13 Q. Do you agree or disagree that it's kind
14 of a heads I win, tails you lose type of approach?

15 A. (Mr. Peters) No.

16 Q. Lines 71 to 72 on page 4, where did you
17 obtain your understanding that ComEd is allowed to
18 collect imbalance charges from PPO customers?

19 A. (Mr. Peters) I believe it is correct that
20 ComEd has a specific tariff regarding retail
21 imbalance which addresses their charging of imbalance
22 to PPO customers.

1 Q. Have you read the tariff?

2 A. No.

3 Q. If you haven't read the tariff, where did
4 you get the idea that they had such a tariff?

5 A. (Mr. Peters) As part of certain RES
6 workshops which ComEd sponsored.

7 Q. Now can you turn to the next page of
8 Exhibit 2.6? I assume you prepared this sample
9 calculation of CTC or Simple Calculation of CTC and
10 Simple Calculation of PPO. Is that correct?

11 A. (Mr. Peters) Yes.

12 Q. Would you agree that if I changed under
13 the Simple Calculation of CTC in the right -hand
14 column Correct Market Value, if I changed the correct
15 market value from 6 cents to 5.1 cents, the
16 transition charge would be a negative 0.1 cents and
17 therefore a zero?

18 A. (Mr. Peters) Yes.

19 Q. Now, I'm going to talk about this
20 calculation in terms of Customer A. Okay? We're
21 making this calculation for Customer A. Okay? Now
22 in your Simple Calculation of PPO, if we did this for

1 Customer A and we changed the market value in the
2 Simple Calculation for PPO from 6 cents to 5.1 cents
3 and the PPO rate from 7.5 cents to 6.6 cents, would
4 the savings versus base rate be 0.4 cents?

5 A. (Mr. Peters) The only component you were
6 changing was market value. Is that correct?

7 Q. And the PPO rate from 7.5 to 6.6.

8 A. (Mr. Peters) The PPO rate would be 6.6,
9 yes.

10 Q. All right. So if we changed those two
11 values, we get a product of a positive 0.4 cents. Is
12 that correct?

13 A. (Mr. Peters) Yes.

14 Q. Now, you have a note under this
15 calculation. Is that correct?

16 A. (Mr. Peters) Yes.

17 Q. And in that note you indicate that the
18 column entitled -- it's the last column in your
19 calculation, Correct Market Value, that that
20 represents the utility's cost to serve. Is that
21 correct?

22 A. (Mr. Peters) Yes.

1 Q. And this would not produce a charge to
2 the customer -- strike that.

3 That's not the customer's charge since the
4 customer with a zero CTC is ineligible for PPO
5 service on the IP system. Is that correct?

6 A. (Mr. Peters) Yes.

7 Q. Now for Customer A, if we changed in that
8 column under Simple Calculation of CTC the market
9 value from 6 cents to 5.1 cents and we produced the
10 negative 0.1 cents, which means a zero CTC, and in
11 the Simple Calculation of PPO we changed the 6 cents
12 to 5.1 cents and the 7.5 cents to 6.6 cents and
13 produced a savings of .4 cents, what would be the
14 utility's cost to serve the PPO customer in that
15 circumstance?

16 A. (Mr. Peters) I believe it's the same,
17 6.6.

18 Q. And that's a combination of market value
19 at 5.1 and T&D at 1.5. Is that correct?

20 A. (Mr. Peters) Yes.

21 Q. Now your hypothesis that if the market
22 value used in the CTC calculation is below the

1 correct market value and the CTC will therefore be
2 too high, competitive suppliers will be unwilling to
3 offer power to customers at a rate below market would
4 still apply, would it not?

5 A. (Mr. Peters) Do you have the reference
6 for that so I can confirm what I said?

7 Q. Line 89. It's the last sentence on the
8 page, page 5.

9 A. (Mr. Peters) I believe my statement is
10 that the customer is being served at a rate below
11 that which a competitive supplier would be willing to
12 offer.

13 Q. All right, and in my sample he would
14 still be being served at a rate below which a
15 competitive supplier would be willing to offer it,
16 would he not? My Customer A.

17 A. (Mr. Peters) If the correct market values
18 had been applied, then a competitive supplier may be
19 willing to serve that customer.

20 Q. All right, and if the correct market
21 value is applied in your example, he would still be
22 willing to serve the customer?

1 A. (Mr. Peters) They may be willing, yes.

2 Q. Now in both your example and my example
3 you came -- or I'm sorry -- in your example you came
4 to the conclusion that the correct market value was
5 too high for competitive suppliers to offer power.
6 Is that correct?

7 A. (Mr. Peters) The example is one which the
8 actual market value or correct market value is above
9 that which is used in the calculation of transition
10 charges, yes.

11 Q. And in my sample the correct market value
12 was above that which was used to calculate transition
13 charges also, isn't it?

14 A. (Mr. Peters) Yes.

15 Q. So in both instances would you agree that
16 it would be, based on your hypothetical, or your
17 statement down here, likely that no competitive
18 supplier would be willing to offer to sell at that
19 price?

20 MR. LAKSHMANAN: Could I just clarify to make
21 sure I'm understanding? Are you talking about the
22 fact that in one case the price has been manipulated

1 downward for the use of the CTCs and that the value
2 was otherwise as you just stated?

3 MR. ROBERTSON: I'm using his example. I'm
4 making all of his assumptions except all I did was
5 change the values as described.

6 MR. LAKSHMANAN: I just want to make sure I
7 understand what the hypothetical is.

8 A. (Mr. Peters) To the extent that the
9 utility's cost to serve is 6.6 and your hypothetical
10 example A represents the market price or the market
11 cost for all participants and the PPO rate using a
12 manipulated downward number of 4 cents versus your
13 5.1 gives a PPO rate of 6.5 cents, it is unlikely
14 that a RES could compete against that. It is more
15 likely that they could compete at 6.6 versus 6.5 than
16 they could at 7.5 versus 6.5.

17 Q. Okay. And in my hypothetical Illinois
18 Power could provide the service at something equal to
19 or more than its cost of service as you defined it,
20 couldn't it?

21 A. (Mr. Peters) If Illinois Power Company
22 was being required to serve this at 6.5 cents versus

1 an actual cost basis, the 6.6 cents, Illinois Power
2 would be losing .1 cent per kilowatt-hour served.

3 MR. ROBERTSON: Could you read that back for
4 me, please?

5 A. If the --

6 Q. Or go ahead. If you want to provide
7 further explanation, that's okay.

8 A. (Mr. Peters) No. I thought you were
9 asking me to repeat.

10 Q. No.

11 A. (Mr. Peters) Sorry.

12 (Whereupon the requested portion of
13 the record was read back by the
14 Court Reporter.)

15 MR. ROBERTSON: All right.

16 Q. In the calculation of the PPO, if the
17 company can acquire the power at 6 cents and sell at
18 6.6 cents, it would be above the company's cost of
19 acquisition of the power, wouldn't it?

20 A. (Mr. Peters) The example I believe
21 ignores the cost of T&D.

22 Q. You're going to recover the cost of the

1 T&D anyway, aren't you? Because a guy has to take
2 delivery service from you, doesn't he, in order to
3 get the PPO option?

4 MR. LAKSHMANAN: I'm going to object to the
5 extent that I'm no longer following the hypothetical.
6 At one point the cost basis was described as the sum
7 of the two, and now you seem to be ignoring it. I
8 just want to make sure that the witness and the
9 record is clear as to what the hypothetical is, and
10 then it will make it easier to move forward.

11 Q. When you calculate the transition of the
12 PPO option, you get the 6.6 cents -- strike that.

13 The 1.5 of T&D in the Simple Calculation
14 of PPO under the column entitled Correct Market Value
15 is 6 cents, right?

16 A. (Mr. Peters) The T&D is 1.5. My example
17 had 6 for the market value.

18 Q. All right. And my hypothetical Customer
19 A has got 5.1 cents plus 1.5 cents is 6.6 cents. Is
20 that correct?

21 A. (Mr. Peters) Yes.

22 Q. And that's the PPO rate, and that

1 includes the transition charge, doesn't it?

2 A. (Mr. Peters) No.

3 Q. That includes the T&D, doesn't it?

4 A. (Mr. Peters) It is not the PPO rate.

5 Q. You've identified it as the PPO rate. In
6 your example the market value is 6 cents and the T&D
7 is 1.5, and you give the PPO rate as 7.5. Now why is
8 the PPO rate in your example but it's not in mine?

9 A. (Mr. Peters) It is not. In my example it
10 clearly states the column to the right represents the
11 utility's cost to serve, not the customer's charge.
12 It is not the PPO rate. The PPO rate is in the
13 column to the left of that of 6.5 cents.

14 Q. The Simple Calculation of PPO is intended
15 to show or the illustrated part the utility's cost to
16 serve that customer on the PPO rate, isn't it?

17 A. (Mr. Peters) It's intended to compare the
18 utility's cost to serve, which is in the column to
19 the right, with the calculated PPO rate, which is the
20 column to the left.

21 Q. And I'm saying if the utility's cost to
22 serve in the right-hand column would change from 6.0

1 cents to 5.1 cents, we produce a PPO rate of 6.6
2 cents, which is the utility's cost to serve, isn't
3 it?

4 A. (Mr. Peters) No.

5 Q. That's the PPO rate.

6 A. (Mr. Peters) No.

7 Q. What is it?

8 A. (Mr. Peters) In this case the customer is
9 not eligible for PPO. Therefore, if the correct
10 market value had been applied, there would be no PPO
11 rate applicable to them. The customer on the left in
12 the example was intended to show the impact of the
13 utility selling to a customer below cost. The rate
14 to the left is the PPO rate.

15 Q. And I'm trying to show that you can sell
16 it to above cost and they're still not eligible for
17 the PPO. Isn't that true? In my example that would
18 be true, wouldn't it?

19 A. (Mr. Peters) I don't believe so because
20 the customer has a PPO rate available to them in this
21 example of 6.5 cents. The utility's cost to serve is
22 6.6 cents. If the utility is required to serve this

1 customer under the PPO at 6.5 cents with a 6.6 cent
2 cost to serve, they are losing .1 cent per
3 kilowatt-hour delivered.

4 Q. You're comparing the left-hand column to
5 the right-hand column. Am I correct?

6 A. (Mr. Peters) Correct.

7 Q. The left-hand column assumes that the PPO
8 option or the market value is manipulated downward in
9 some form or fashion. Correct?

10 A. (Mr. Peters) That was the intent of the
11 example, yes.

12 Q. I understand that, but I'm not asking you
13 any questions about the left-hand column. I'm asking
14 you whether you would agree that in my hypothetical
15 the utility can provide the service at a rate above
16 the cost of providing the service, and by cost of
17 providing the service I mean the price of the power,
18 the market value, the real market value, the correct
19 market value, plus the transmission service. He can
20 provide the power in my example at a rate above the
21 cost of the PPO service. Isn't that correct?
22 Assuming the market value is set correctly.

1 MR. LAKSHMANAN: I'm going to object on the
2 grounds it has been asked and answered repeatedly.

3 MR. ROBERTSON: It's not.

4 MR. LAKSHMANAN: He has provided the best
5 response as he could under the circumstances.

6 MR. ROBERTSON: It's not. I'm not challenging.
7 Mr. Peters is trying to do his job and so am I, so
8 this is not personal at all, Mr. Peters, but don't
9 drag the left-hand column into it because my
10 questions don't relate to the left-hand column. I'd
11 like you to answer my question on the basis of the
12 information that is shown in the right-hand column.

13 Q. Would you agree with me that if the
14 market value is set correctly, and its true value is
15 5.1 cents, that the utility can provide the PPO
16 service and still provide it at a rate in excess of
17 the cost of providing the PPO service which is the
18 market value plus the T&D?

19 MR. LAKSHMANAN: Not only will I object on the
20 grounds it has been asked and answered, I would
21 object to the fact that he's trying to limit the
22 witness in explaining how he gets to his answer.

1 It's a hypothetical provided by the witness, and he
2 has already stated that there's a linkage between the
3 left-hand column and the right-hand column, and yet
4 Mr. Robertson won't let him explain that, and he has
5 explained it repeatedly.

6 MR. ROBERTSON: Your Honor, this gentleman has
7 opined that the utility will be subsidizing
8 competition because it's going to recover something
9 less than the cost of providing the service, and I'm
10 trying to demonstrate, and I think it's a fair
11 inquiry, that there are circumstances under which the
12 utility can provide this service and recover
13 something in excess of cost of providing the service,
14 and all I'm trying to do is whether or not he agrees
15 that that could be the case based on the hypothetical
16 example that I gave him.

17 MR. LAKSHMANAN: And I believe that has been
18 asked and answered repeatedly.

19 MR. ROBERTSON: No, it's not. He keeps
20 dragging the assumption that there's an incorrect
21 market value being used and trying to compare the
22 results there to my hypothetical, and that wasn't my

1 hypothetical at all.

2 EXAMINER JONES: Well, rather than going back
3 into the record to see whether that specific question
4 has, in fact, been asked and answered, in order to
5 sort of save some time we'll allow the question and
6 ask the witness to answer the question to the extent
7 he understands the question and is able to do so.

8 A. (Mr. Peters) Assuming in your question,
9 your hypothetical example, that Illinois Power
10 Company was offering PPO to customers without a
11 transition charge, which is my understanding we
12 currently do not nor do we intend to, if the PPO rate
13 was established such as 5.1 was market rate, the T&D
14 rate was 1.5 cents, Illinois Power Company would be
15 selling at cost.

16 Q. Okay.

17 I want to talk to you about a different
18 subject now. If we go down on page 6 to line 100,
19 you talk about using the same pricing structure for
20 the PPO that's used to establish the TC helps
21 Illinois Power maintain the integrity of the
22 economics of the rate and sends definite price

1 signals to customers, allowing them to further
2 increase their savings by operating in a manner which
3 helps the reliability of the system. Do you see
4 that?

5 A. (Mr. Peters) Yes.

6 Q. How would PPO customers operate in a
7 manner which helps the reliability of the system?

8 A. (Mr. Peters) They reduce their on-peak,
9 super-peak usage.

10 Q. Now at page 6, line 107 to 109, you talk
11 about -- could you explain to me how customers who
12 implement demand-side management programs while on
13 Illinois Power's PPO service can realize greater
14 benefits?

15 A. (Mr. Peters) Since the market value,
16 which is used to calculate the transition charge, is
17 based on a load profile for the customer, if the
18 customer changes their usage relative to that load
19 profile, the avoided cost under Illinois Power's PPO
20 will be at the price-shaped hourly rate for that
21 hour. That will be their avoided cost versus the
22 average rate which was used in the calculation of the

1 TC.

2 Q. Okay. Now would you turn to page 10,
3 question and answer number 10, first sentence in that
4 answer at lines 187 to 189. Would you consider it
5 unreasonable for a customer to need two weeks or more
6 to review offers and select one and negotiate the
7 final terms and approve the contracts?

8 A. (Mr. Peters) Depending on what was being
9 negotiated and what was being purchased, perhaps.

10 Q. How many competitive retail offers have
11 you reviewed or negotiated on behalf of an end use
12 customer?

13 A. (Mr. Peters) In my prior position as
14 retail pricing, 2- to 300.

15 Q. For who?

16 A. On behalf of Illinois Power Company on
17 contracts in which I did the pricing analysis.

18 Q. Illinois Power Company is not an end use
19 customer, is it?

20 A. Illinois Power Company was making offers
21 to end use customers.

22 Q. All right. How many end use customers

1 have you worked for in evaluating and reviewing
2 competitive contracts so that they will make a
3 decision, execute the documents, review the
4 documents, whatever else they need to do?

5 A. (Mr. Peters) None.

6 Q. Now, if you would assume a bundled
7 service customer has a meter read date on October
8 2nd, today, when would he have learned of a CTC under
9 your methodology?

10 A. (Mr. Peters) I refer that to Mr. Jones.

11 Q. You lucked out so far, Mr. Jones.

12 (Pause in the proceedings.)

13 Let me maybe shorten this up. Mr. Jones,
14 would you agree that it would be the eighth business
15 day of September?

16 A. (Mr. Jones) Yes.

17 Q. And that would be September the 13th,
18 would it not, in this example? We've got Labor Day
19 in there.

20 A. (Mr. Jones) I don't have a calendar with
21 me.

22 Q. Would you accept, subject to check, that

1 it is?

2 A. (Mr. Jones) Subject to check, yes.

3 Q. Now in this circumstance how many days
4 would occur between the time the customer knows he's
5 going to have a transition charge and the last date
6 for his chosen supplier to submit a DASR? Would you
7 agree it would be three business days or five
8 calendar days?

9 MR. LAKSHMANAN: I'm going to object on the
10 grounds that -- if they can answer, that's fine, but
11 Ms. Voiles is actually the person who has testified
12 on those sorts of issues as to what's contained in
13 the delivery service tariff, DASR processes, and how
14 we've changed those.

15 A. (Mr. Jones) I'm not entirely clear on
16 your example. I have a meter read on October 2nd.

17 Q. Correct.

18 A. (Mr. Jones) September 13th, subject to
19 check, is the date.

20 Q. Yes.

21 A. (Mr. Jones) Where the transition charge
22 is known.

1 Q. And the last day that the customer can
2 submit a DASR is which, from bundled service to
3 supply service? It's a new customer. It would be
4 September the 18th.

5 A. (Mr. Jones) That may be right. I think I
6 would like to defer these questions to Ms. Voiles.

7 Q. Okay.

8 Well, let's assume the customer only had
9 three business days. Do you think that's reasonable,
10 Mr. Jones, to make a decision to buy several hundred
11 megawatts of power for a couple years or more,
12 negotiate the contracts, get the contract approval at
13 corporate? Could you do that at Illinois Power?

14 A. (Mr. Jones) I think it depends on the
15 circumstances. If I knew what was happening the
16 prior month or the prior months, I may do it, yes.

17 Q. And if you were a brand-new customer and
18 had never done this before, you could do it?

19 A. (Mr. Jones) If you were a brand-new
20 customer?

21 Q. Yep.

22 A. (Mr. Jones) You could do it, yes.

1 Q. All right. Do you think it is reasonable
2 to require a customer to do that, given the magnitude
3 of the decision, financial commitment, and the lack
4 of knowledge in the industry? Is that customer
5 friendly?

6 MR. LAKSHMANAN: Objection. There is a
7 multiple question pending at this point.

8 EXAMINER JONES: Sustained.

9 MR. ROBERTSON: I'll drop off the part about
10 customer friendly.

11 MR. LAKSHMANAN: I still object to the fact
12 that we have multiple questions pending.

13 Q. Do you think a customer who is not
14 Illinois Power and is not a Dynegy, who has not done
15 this type of negotiation or entered into this type of
16 transaction previously, is brand-new to this, that it
17 is reasonable -- and he wants to buy 100 megawatts of
18 power to meet his manufacturing requirements, it's
19 reasonable to require him to make that decision in
20 three days, negotiate the contracts, negotiate the
21 price, get approval from his corporate headquarters,
22 do all the things that are necessary from the

1 customer side to make the transaction work? Do you
2 think it's reasonable?

3 A. (Mr. Peters) Illinois Power --

4 Q. I'm not asking you, Mr. Peters. I'm
5 asking Mr. Jones.

6 MR. LAKSHMANAN: I object on the grounds that I
7 believe both of them, as we said before, should be
8 entitled to respond to the extent they believe that
9 they can.

10 MR. ROBERTSON: Well, Mr. Jones is the one who
11 offered the opinion that this could be done, and I'm
12 asking him whether or not he thinks it's reasonable.
13 I'm not asking Mr. Peters.

14 MR. LAKSHMANAN: And my objection goes to the
15 fact that if Mr. Peters would like to also respond, I
16 believe he should be entitled to do so.

17 MR. ROBERTSON: Well, I'd like to hear from
18 Mr. Jones first, if I may.

19 EXAMINER JONES: We'll hear from Mr. Jones
20 first.

21 A. (Mr. Jones) If this is a customer who is
22 purchasing several units of megawatts, several

1 hundred megawatts perhaps, it would be reasonable to
2 assume that customer is fairly sophisticated, they're
3 not naive in the market, and that they would know, in
4 general, what the market price of power would be, so
5 they may be able to make a decision in three days.

6 Q. What if they had multiple offers? Could
7 they do that in three days?

8 A. (Mr. Jones) I don't know.

9 Q. Well, let me ask it a different way.
10 From the point of view of customers, would you agree
11 or disagree that sometimes it takes Illinois Power
12 several weeks to reply to a customer's inquiry with
13 regard to the calculation of his transition charge?

14 MR. LAKSHMANAN: Objection on the grounds of
15 relevance to this line of questions.

16 MR. ROBERTSON: It is relevant to Illinois
17 Power can't give an answer to a question that they're
18 required to give under the law, a transition charge,
19 and they're the experts in the field, for weeks at a
20 time, but they think it's reasonable for a customer
21 to make these kind of decisions in three days.

22 Q. Isn't it true, Mr. Jones, that it takes

1 Illinois Power sometimes weeks and weeks to provide
2 the calculation of the transition charge?

3 A. (Mr. Jones) Back in October of '99 that
4 may have been the case. I don't believe that's the
5 case today.

6 Q. Based on your experience?

7 A. (Mr. Jones) Yes.

8 Q. Okay. How long does it take today? More
9 than three days?

10 A. (Mr. Jones) I believe for most customers
11 it can be turned around in one day or less.

12 Q. What do you mean by most customers?

13 A. (Mr. Jones) For customers which their
14 customer history has been set up, the TC may have
15 already been calculated for that customer in
16 anticipation of them asking the question.

17 Q. Was Illinois Power ready to do that right
18 out of the box the first time, back in 1999?

19 A. (Mr. Jones) Not for all customers, no.

20 Q. There was a learning curve involved,
21 wasn't there?

22 A. (Mr. Jones) Yes.

1 Q. And it took weeks at a time, as we
2 discussed, for Illinois Power to provide that
3 information. Isn't that correct?

4 A. (Mr. Jones) Perhaps for some customers,
5 yes.

6 Q. All right, and don't you think it's
7 possible that customers will have a learning curve in
8 this new environment?

9 A. (Mr. Jones) I believe so, yes.

10 Q. And it could take them several weeks to
11 make a decision on these kind of offers once they
12 have offers presented to them, to evaluate them, to
13 understand the language of the contract, to negotiate
14 the contracts, the prices, terms, and then to get
15 approval from corporate to sign them?

16 A. (Mr. Jones) I don't know if I can testify
17 to what other customers --

18 Q. I'm just asking do you think that's
19 unreasonable?

20 MR. LAKSHMANAN: He answered that he doesn't
21 believe he can speculate as to what other customers
22 would or would not be able to do.

1 MR. ROBERTSON: He told me that he thought they
2 could do it in three days. I'm asking him now
3 whether it would be unreasonable to take several
4 weeks under the circumstances I've described. If he
5 can offer an opinion on three days, he can offer an
6 opinion on what I asked.

7 Q. Would you please answer, Mr. Jones?

8 A. (Mr. Jones) Some customers may take
9 longer than others, yes.

10 Q. And it wouldn't be unreasonable for them
11 to do so, considering the status of the development
12 of the market and everybody's knowledge in the field.
13 Isn't that correct?

14 A. (Mr. Jones) Different customers are
15 different. Some may take longer than others, yes.

16 Q. So I take it you think it's not
17 unreasonable that that would be the case.

18 A. (Mr. Jones) Again, it may be reasonable
19 for some customers to take several weeks and other
20 customers --

21 Q. Well, was it reasonable for Illinois
22 Power --

1 EXAMINER JONES: Well, let the witness finish
2 his answer.

3 Q. I'm sorry. I'm sorry, Mr. Jones. You go
4 ahead and finish your answer.

5 A. (Mr. Jones) I believe I was finished.
6 Did you get it all?

7 REPORTER DAVIS: No.

8 (Whereupon the witness's answer was
9 read back by the Court Reporter.)

10 A. (Mr. Jones) Other customers three days.

11 Q. When you all use the term infinitum here
12 at line 189, what did you have in mind, on Exhibit
13 2.6 of page 10, question and answer number 10?

14 A. (Mr. Peters) The intent of the phrase is
15 to mean that customers may not have a prolonged
16 period for decision making with known and absolute
17 values.

18 Q. Okay. So you didn't have a specific
19 period of time in mind.

20 A. (Mr. Peters) No.

21 Q. I just want to ask one more question
22 about the time period for review. Am I correct or

1 incorrect in my recollection that there were many
2 instances in which Illinois Power took months to
3 provide customers with an offer when requested to do
4 so in the context of requesting a contract from
5 Illinois Power? Do you have any experience in that
6 area?

7 A. (Mr. Jones) I have a limited amount of
8 knowledge in that area.

9 Q. Based on that limited knowledge, have you
10 heard anything that it took in some cases many months
11 for Illinois Power to get offers to customers?

12 A. (Mr. Jones) It took a matter of weeks,
13 sometimes, you know, somewhere in that range.

14 Q. Now if it takes the utility weeks to make
15 the offer, do you think it's reasonable to ask the
16 customer to make the decision about the offer in
17 three days?

18 A. (Mr. Peters) Illinois Power does not ask
19 the customer to make that decision in three days.

20 Q. I'm talking about Mr. Jones's answer to
21 my question awhile ago when we talked about the three
22 days, and he said he thought it would be reasonable

1 for some customers to do that, but thanks anyway,
2 Mr. Peters.

3 Mr. Jones?

4 A. (Mr. Jones) I believe the circumstances
5 are different.

6 Q. Okay.

7 Now, page 11, line 209 to 213, part of
8 your answer to question number 10, you refer to the
9 probability of the value being accurate in that
10 portion of your testimony. Is that correct?

11 A. (Mr. Peters) Yes.

12 Q. What do you mean by the term accurate?

13 A. (Mr. Peters) Representative of the actual
14 market that other participants are experiencing.

15 Q. How is that measured?

16 A. (Mr. Peters) How is accuracy currently
17 measured?

18 Q. Uh-huh.

19 A. (Mr. Peters) I don't believe there's any
20 empirical measure that exists outside of each
21 individual shop.

22 Q. Okay. In the case of Illinois Power.

1 MR. LAKSHMANAN: To the extent that it's not
2 confidential as to how we determine accuracy.

3 A. (Mr. Peters) We believe our current MVI
4 methodology proposed yields accurate values.

5 Q. Could it be measured in relation to a
6 spot market?

7 A. (Mr. Peters) The on-peak components I
8 would disagree that you could measure forward
9 accuracy against current spot.

10 Q. The long-term market, is there any other
11 type of market to be measured against?

12 A. (Mr. Peters) The underlying index value
13 is a monthly forward market and should be measured
14 against the monthly forward market.

15 Q. I'm not asking about what you used. I'm
16 asking about whether or not it is possible that the
17 accuracy could be determined through the use of
18 comparison to a different type of product.

19 A. (Mr. Peters) If an appropriate
20 statistical correlation basis was determined and
21 accepted, yes.

22 Q. All right. Page 12, line 223 to 225. Do

1 most customers on the IP system have wide ranging
2 access to new services, broker exchanges, and
3 affiliated trading floors?

4 A. (Mr. Peters) I don't know.

5 Q. Do you believe that most customers do?

6 A. (Mr. Peters) I don't know.

7 Q. Last question. On the last page, 2.6,
8 page 29, line 595, what's the source of the \$185 bid
9 and the \$220 offer?

10 A. (Mr. Peters) The source of the data was
11 my review of various trade publications to which I
12 have access to.

13 Q. But this is a specific number, or is it
14 an average? I thought bid and offers were specific
15 numbers, so this came from a specific source. What
16 specific source did it come from?

17 A. (Mr. Peters) I don't currently recollect.

18 Q. Can you provide that for the record?

19 A. (Mr. Peters) Yes.

20 MR. ROBERTSON: Thank you.

21 That's all I have. Thank you,

22 Mr. Examiner.

1 EXAMINER JONES: Okay.

2 MR. ROBERTSON: Thank you, Mr. Peters and
3 Mr. Jones.

4 EXAMINER JONES: Off the record.

5 (Whereupon at this point in the
6 proceedings an off-the-record
7 discussion transpired, and a
8 ten-minute recess was taken.)

9 EXAMINER JONES: Back on the record.

10 I believe a couple other parties have some
11 cross-examination for the IP witnesses.

12 MR. FEIN: Yes. Thank you, Mr. Examiner.

13 CROSS EXAMINATION

14 BY MR. FEIN:

15 Q. Good evening, Mr. Jones and Mr. Peters.

16 A. (Mr. Jones) Good evening.

17 Q. Mr. Peters, if I could direct these first
18 set of questions to you because I believe it was you
19 who stated your -- the company's response to the
20 NewEnergy surrebuttal testimony at the outset of your
21 testimony today.

22 A. (Mr. Peters) Yes.

1 Q. Was that response that you orally gave
2 today prepared by you?

3 A. (Mr. Peters) Yes, it was.

4 Q. And when was that prepared?

5 A. (Mr. Peters) The 29th.

6 Q. The 29th, and I don't have a calendar in
7 front of me. That would have been Friday I guess.
8 Is that correct?

9 A. (Mr. Peters) Yes.

10 Q. Now I'm going to ask you some questions
11 related to your surrebuttal testimony, your Exhibit
12 2.8, and I'll start with you, Mr. Peters. I'm not
13 exactly sure who this question is more appropriately
14 directed to. On lines 54 through 56 on page 3 of
15 your surrebuttal testimony, do you see that
16 reference?

17 A. (Mr. Peters) Yes.

18 Q. Is it your understanding -- or strike
19 that.

20 Do you understand that Illinois Power
21 bears a burden of proof in this proceeding?

22 A. (Mr. Peters) Well, I'm not an attorney.

1 I don't fully understand, but that's my personal
2 understanding, yes.

3 Q. Are you also understanding, not as an
4 attorney, obviously, that there is no burden up on
5 NewEnergy, for example, to present alternatives to
6 the Commission, but it is Illinois Power's burden to
7 --

8 A. (Mr. Peters) I don't know.

9 Q. -- prove that their tariff should be
10 approved? You don't know?

11 A. (Mr. Peters) No.

12 Q. Okay. Is it your understanding as a lay
13 person that Illinois Power need only demonstrate that
14 the NFF process is flawed?

15 A. (Mr. Peters) No.

16 Q. Is it your understanding that Illinois
17 Power must also demonstrate that its proposed
18 alternative to the Neutral Fact Finder is just and
19 reasonable?

20 A. (Mr. Peters) Yes.

21 Q. Do you agree that if the Commission finds
22 that the company's proposal is not just and

1 reasonable, that it could reject Illinois Power's
2 proposal and then would be retaining the Neutral Fact
3 Finder process?

4 A. (Mr. Peters) To the extent of my limited
5 understanding of Commission proceedings, yes.

6 Q. Now at that same page of your testimony
7 at the bottom of that page and continuing on to the
8 next page you imply that NewEnergy has advocated that
9 Illinois Power should be required to use the Into
10 ComEd market. Do you see that?

11 A. (Mr. Peters) What was the line cite,
12 please?

13 Q. I believe it starts, at least on my
14 version, begins the sentence beginning on line 58 and
15 continuing then on to the next page.

16 A. (Mr. Peters) And could you repeat the
17 question then, please?

18 Q. Yes. In that passage you assert that
19 NewEnergy has advocated that Illinois Power be
20 required to use the Into ComEd market. Is that a
21 correct reading of your testimony there?

22 A. (Mr. Peters) I believe that's a fair

1 characterization, yes.

2 Q. And do you have a copy of NewEnergy's
3 testimony in front of you that you are referencing in
4 that portion of your testimony?

5 A. (Mr. Peters) Yes.

6 Q. And can you tell us which piece of
7 testimony you're referring to for that assertion?

8 A. (Mr. Peters) The assertion is built upon
9 a series of arguments that was made in testimony, the
10 first --

11 Q. Do you -- I'm sorry. Go ahead.

12 A. (Mr. Peters) The first being on page 14,
13 line 5, whereby NewEnergy supports use of a
14 methodology based on Into ComEd rather than a
15 methodology based on Into Cinergy plus a basis or
16 locational adjustment.

17 Q. And which piece of testimony are you
18 referring to?

19 A. (Mr. Peters) This is the joint direct
20 testimony of Dr. O'Connor and Mr. Bramschreiber.
21 Then throughout that there's arguments presented
22 against the use of what they have termed a non -

1 representative market index, and combined with our
2 inability to find an alternative being offered, what
3 appeared to us that had been argued was that the only
4 viable index being offered up was Into ComEd, and
5 that since Illinois Power Company is not located
6 inside the boundaries of the Into ComEd market, it
7 would require a basis adjustment, giving the argument
8 against the basis adjustment that's made. That's the
9 basis for our statement.

10 Q. Did you continue to read on in the
11 testimony the following question and answer that
12 specifically addressed the Ameren and Illinois Power
13 methodology?

14 A. (Mr. Peters) Yes.

15 Q. And do you see NewEnergy making that same
16 -- making any assertion on pages 15 through 16 that
17 the Into ComEd market should be utilized for Ameren
18 or Illinois Power?

19 A. (Mr. Peters) No. What I took away from
20 this reading was that they were suggesting that the
21 use of Cinergy or the Cinergy type index plus
22 historical locational adjustments was not

1 appropriate.

2 Q. Now did the company even explore the
3 possibility of using the Into ComEd market, to the
4 best of your knowledge?

5 A. (Mr. Peters) It was discussed, but I
6 don't believe any empirical analysis was performed on
7 it.

8 Q. I'm sorry. I couldn't hear the last
9 portion of your answer.

10 A. (Mr. Peters) The issue was discussed, but
11 I don't believe any empirical analysis was performed
12 on it.

13 Q. Do you have any knowledge why this
14 alternative was rejected?

15 A. (Mr. Peters) Since Illinois Power is not
16 located within the Into ComEd hub, the uses of a
17 basis adjustment was required for either the use of
18 Into ComEd or Into Cinergy. It's our belief that the
19 Into Cinergy for our purposes represents a more
20 robust market and perhaps avoided some of the issues
21 which were raised in the use of Into ComEd.

22 Q. Are you aware how many customers --

1 either one of the witnesses can answer this -- how
2 many customers in the company's service territory are
3 taking delivery services?

4 A. (Mr. Jones) The number is changing, but
5 somewhere on the order of 100 today.

6 Q. Do you know approximately how many
7 megawatts that represents?

8 A. (Mr. Peters) Peak demand or aggregate
9 usage?

10 Q. Aggregate usage.

11 A. (Mr. Jones) I'm not sure down to the
12 megawatt, but something less than 400.

13 Q. Of those 100 customers, how many are
14 taking the purchase power option or PPO?

15 A. (Mr. Jones) As it is today, I'm
16 uncertain. Last month it was all but one.

17 Q. Do you know how many megawatts that one
18 customer represents out of the --

19 MR. LAKSHMANAN: I would object that you are
20 giving out customer specific information without the
21 customer approval under Section 16-122.

22 Q. Let me ask you this. Is that one

1 customer being served by a retail electric supplier I
2 gather?

3 A. (Mr. Jones) Yes.

4 Q. Is that a retail electric supplier other
5 than an affiliate of Illinois Power Company?

6 A. (Mr. Jones) Yes.

7 Q. Is this one customer being served by
8 another Illinois utility?

9 A. (Mr. Jones) I believe that to be true,
10 yes.

11 Q. Turning to page 5 of your surrebuttal
12 testimony, lines 89 to 90, when you state not every
13 megawatt that leaves is firm, do you see that
14 reference?

15 A. (Mr. Peters) Yes.

16 Q. Are you referring to the actual
17 experience in Illinois Power's service territory?

18 A. (Mr. Peters) Yes.

19 Q. Likewise, when you state a significant
20 portion of the load currently on delivery services is
21 non-firm, are you referring to the actual experience
22 in Illinois Power's service territory?

1 A. (Mr. Peters) Yes.

2 Q. Is Illinois Power using firm power to
3 serve its PPO customers?

4 MR. LAKSHMANAN: It's firm PPO customers or all
5 of its PPO customers?

6 Q. Is Illinois Power using firm power to
7 serve all of its PPO customers?

8 A. (Mr. Peters) Could you clarify your
9 definition of firm, please?

10 Q. Well, I'm more interested actually in
11 your definition of firm as you use it on this page of
12 your testimony.

13 A. (Mr. Peters) The definition of firm as
14 used on this page reflects -- is reflective of the
15 customers' rights and the company's ability to
16 interrupt that load. It is not in reference to our
17 various supply resources that serve that load.

18 Q. Then is it fair to state that you use a
19 different definition of firm power with respect to
20 serving your PPO customers than in your use of the
21 phrase firm that you just provided?

22 A. (Mr. Peters) No. I believe that the

1 issue in this case is specified within the applicable
2 tariffs.

3 Q. And would that be your PPO tariff?

4 A. (Mr. Peters) Yes, and any tariffs to
5 which it's referenced.

6 Q. On lines 94 and 95 on that same page you
7 discuss the provider of last resort requirement. Do
8 you see that sentence that begins on line 94?

9 A. (Mr. Peters) Yes.

10 Q. Does the company no longer want to be the
11 provider of last resort?

12 MR. LAKSHMANAN: Objection on the grounds to
13 the extent that he is speaking on behalf of company
14 policy for which I don't I believe he has been
15 offered up for.

16 MR. FEIN: Well, he is opining about the
17 provider of last resort requirement.

18 MR. LAKSHMANAN: Stating that it exists. He is
19 not necessarily stating what our policy would or
20 would not be with regard to its continuance.

21 MR. FEIN: Well, if the witness doesn't know
22 the answer, he doesn't know the answer. If counsel

1 wants to testify, that's another story too.

2 MS. READ: I'm going to add an objection to
3 this on the grounds of relevance in light of the
4 hour. The law is what it is, and Illinois Power is
5 required to obey it, so I object to the relevance of
6 whether they want to obey the law or not.

7 MR. FEIN: It has nothing to do with obeying
8 the law. I'm asking --

9 MS. READ: Well, the obligation to be a
10 provider of last resort is stated in 16-103 of the
11 law.

12 MR. FEIN: Well, let me ask this question. If
13 he doesn't know the answer, then we'll move on.

14 Q. Do you know what position Illinois Power
15 Company took regarding the provider of last resort
16 issue in the debates before the General Assembly that
17 led to the passage of the Customer Choice Act?

18 A. (Mr. Peters) No, I do not.

19 Q. Do you know how many customers throughout
20 the state have taken no fault default service?

21 A. (Mr. Peters) No, I do not.

22 Q. Do you know how many customers in

1 Illinois Power's service territory have taken no
2 fault default service?

3 A. (Mr. Peters) No, I do not.

4 Q. Is there another witness who is
5 testifying on behalf of the company in this
6 proceeding who might know the answer to that
7 question, those two questions?

8 A. (Mr. Peters) I do not know personally.

9 Q. Mr. Jones, can you help him out?

10 A. (Mr. Jones) I don't know the answers to
11 those either.

12 Q. Do you know if any of the other company
13 witnesses who are testifying in this proceeding would
14 know the answers to those questions?

15 A. (Mr. Jones) Not without asking them, no.

16 Q. At what level does Illinois Power
17 calculate individual transition charges? What level
18 of usage does the company calculate individual
19 transition charges?

20 A. (Mr. Jones) We calculate individual
21 transition charges for customers down to 100 KW of
22 demand.

1 Q. And do you know what is required under
2 the Customer Choice Act for Illinois Power Company?

3 MR. LAKSHMANAN: To the extent you know. I
4 mean obviously the law is what the law is.

5 MR. FEIN: Yes, it is.

6 A. (Mr. Jones) I don't recall if it's a
7 1,000 KW or 3,000 KW. I think there was maybe 1,000
8 for Illinois Power.

9 Q. Let me ask you a hypothetical question.
10 Whichever one of you is better prepared to answer,
11 that's fine. Assume that the company has a customer
12 that has demand of 10 megawatts that's taking service
13 under standard bundled rates. Would you agree that
14 all else being equal, Illinois Power must have 10
15 megawatts available to serve that bundled service
16 customer?

17 A. (Mr. Peters) Yes.

18 Q. Now assume that a customer takes delivery
19 services from a retail electric supplier. What level
20 of reserves would Illinois Power need to maintain to
21 provide imbalance service for this customer?

22 A. (Mr. Peters) I'm not certain I can answer

1 that specifically because the issue is not viewed in
2 a vacuum as to only one customer. It's viewed in
3 aggregate across our system. It's a system-wide
4 decision.

5 Q. Would the company use firm power to
6 maintain whatever imbalance reserve would be
7 necessary?

8 A. (Mr. Peters) It may use a variety of
9 products to provide it.

10 Q. How would the company calculate the
11 amount of reserves necessary for providing imbalance
12 service?

13 A. (Mr. Peters) I don't believe that
14 calculation is done. The issues around reserves are
15 calculated against the total load requirement.

16 Q. Now let's switch the hypothetical.
17 Assume that this customer did not take delivery
18 services from a retail electric supplier but instead
19 took the PPO from Illinois Power. What level of
20 reserves in that instance would the company need to
21 maintain to provide imbalance service for this
22 customer?

1 A. (Mr. Peters) Again, imbalance is not --
2 reserves pertinent to imbalance are not individually
3 calculated.

4 Q. I'm sorry. I couldn't hear you.

5 A. Any reserves associated with imbalance
6 are not individually calculated. It's calculated as
7 a part of the total load requirement.

8 Q. Would your answer be any different if the
9 customer in the hypothetical remained a bundled
10 service customer?

11 A. (Mr. Peters) Reserves are part of the
12 total load requirement issue.

13 Q. Does the company realize financially firm
14 as being a designated resource?

15 A. (Mr. Peters) In my experience and
16 understanding, financially firm may possibly qualify
17 as a designated resource if the transmission customer
18 that is attempting to portray that as a designated
19 resource is able to show a contractual path that is
20 firm from a source generator to a customer's sink on
21 a forward basis, so as a chain of contracts, it may
22 indeed qualify. Again, I do not work in nor do I

1 represent Transmission Services.

2 MR. FEIN: If I could have a moment.

3 (Pause in the proceedings.)

4 Q. Are you familiar with the company's
5 retail electric supplier handbook?

6 A. (Mr. Peters) No, I'm not.

7 Q. Mr. Jones?

8 A. (Mr. Jones) No, I'm not.

9 Q. Are you aware whether any of the other
10 company witnesses who are testifying in this case are
11 familiar with Illinois Power's very own retail
12 electric supplier handbook?

13 A. (Mr. Peters) I don't know.

14 A. (Mr. Jones) I recall it being referenced
15 in one of the witness's testimony.

16 Q. Okay.

17 Are you familiar with the company's
18 requirements regarding scheduling?

19 A. (Mr. Peters) Only to the extent of my own
20 experience and understanding, yes.

21 Q. And when you say your own experience and
22 understanding, what is that based upon?

1 A. (Mr. Peters) I schedule Illinois Power
2 Company's obligation -- the PPO customers on Illinois
3 Power company's system, I'm their authorized
4 transmission service agent; as such, I schedule.

5 Q. And I would gather, based upon that
6 experience, that you are familiar with the good faith
7 day ahead energy schedules that are required by
8 Illinois Power Company from retail electric
9 suppliers?

10 A. (Mr. Peters) Yes.

11 Q. And is it correct that the good faith
12 scheduling requirement of Illinois Power requires day
13 ahead energy schedules reflective of the expected
14 load?

15 A. (Mr. Peters) I believe that's a fair
16 characterization.

17 Q. Is this an hourly requirement?

18 A. (Mr. Peters) To the extent that an amount
19 must be scheduled in any hour or series of hours in
20 which a load is expected to occur, yes, but it does
21 not require that individual hours be scheduled nor
22 does it require that updates be made within the day

1 on an hourly basis.

2 Q. Now can suppliers rely on day ahead spot
3 transactions in the off-peak period and still comply
4 with the company's good faith provisions as you
5 understand them?

6 MR. LAKSHMANAN: Could you repeat the question
7 for me, please? I'm not sure I heard.

8 MR. FEIN: Sure.

9 Q. Can suppliers rely upon day ahead spot
10 transactions in the off-peak period and still comply
11 with the good faith provision in the company's
12 tariffs and handbook?

13 MR. LAKSHMANAN: Thank you.

14 A. (Mr. Peters) I believe that any
15 transmission customer has the right to make spot
16 purchases on a day ahead basis and to schedule them
17 forward, yes.

18 Q. And that in your understanding would be
19 in compliance with the company's good faith
20 scheduling requirements. Is that a yes to that along
21 with your answer?

22 A. (Mr. Peters) To the extent that the

1 schedules are submitted prior to the applicable
2 scheduling deadline, it's my understanding, yes.

3 Q. Is it true that alternate suppliers must
4 compete against bundled sales service for load?

5 A. (Mr. Peters) Among others, yes.

6 Q. Is it also true that alternate suppliers
7 must compete against PPO service if offered by a
8 utility?

9 A. (Mr. Peters) Among others, yes.

10 Q. Based on your knowledge and experience,
11 are you aware of whether there are transactions each
12 and every weekday -- strike that.

13 Based on your experience, are you aware of
14 whether there are transactions on the day ahead spot
15 market for the off-peak period each and every
16 weekday?

17 A. (Mr. Peters) In my previous experience, I
18 believe it's fair to say that there was the ability
19 to solicit both bids and offers on a daily period for
20 off peak, yes.

21 Q. I'm sorry?

22 A. (Mr. Peters) In my prior experience, I

1 believe it's fair to say that there was the ability
2 to solicit bids and offers for the off-peak periods
3 every day.

4 Q. And that prior experience being?

5 A. (Mr. Peters) I traded short-term power
6 day ahead through one month.

7 Q. It is correct that Illinois Power no
8 longer controls the dispatch of its generation. Is
9 that correct?

10 A. (Mr. Peters) I don't believe that's a
11 correct characterization.

12 Q. Illinois Power no longer owns any
13 generation assets. Is that correct?

14 A. (Mr. Peters) Illinois Power Company has a
15 small minority interest in a particular
16 customer-owned generator. Beyond that, your
17 characterization is correct.

18 Q. And what is the output of that
19 customer-owned generating unit that you reference?

20 A. (Mr. Peters) Seven megawatts, five
21 megawatts. I don't exactly recall.

22 Q. Somewhere between five to seven

1 megawatts?

2 A. (Mr. Peters) Correct.

3 Q. It is correct that a significant portion
4 of the former generation assets that the company
5 owned they no longer own.

6 A. (Mr. Peters) We no longer own them. That
7 is not to say that we do not retain the right and the
8 obligation to dispatch those units in accordance with
9 the purchase power agreement covering the acquisition
10 of power off those units.

11 Q. So is it fair to characterize the
12 purchase power option -- the purchase power
13 agreements that you just referenced, that the company
14 does exert some control over the dispatch of its
15 generation units?

16 A. (Mr. Peters) They're not Illinois Power's
17 generation units. With that clarification, within
18 the guidelines of sound operating policy and sound
19 economic dispatch and other parameters as laid out
20 between the owner of the assets and Illinois Power
21 Company, Illinois Power Company dispatches those
22 units.

1 MR. FEIN: No further questions.

2 EXAMINER JONES: Mr. Seidel, did you want to
3 work your way up to the table here?

4 MR. SEIDEL: Yes. Thank you.

5 Good evening, gentlemen. My name is Mike
6 Seidel, and I represent Central Illinois Light
7 Company.

8 CROSS EXAMINATION

9 BY MR. SEIDEL:

10 Q. I believe one of you earlier testified
11 that as recent as a month ago Illinois Power had only
12 one customer on delivery services that was not being
13 served under the PPO tariff, and just following up on
14 that a little, would it be correct to say that
15 Central Illinois Light Company is the only RES in
16 IP's service territory that has applied for Network
17 Integrated Transmission Service or obtained Network
18 Integrated Transmission Service, if you know?

19 A. (Mr. Jones) I don't know.

20 A. (Mr. Peters) I don't know the answer to
21 that.

22 Q. What is the purpose of the statement on

1 the application for network -- in Illinois Power's
2 application for Network Integrated Transmission
3 Service that may currently suggest a 17 to 20 percent
4 planning reserve margin for each years of maximum
5 demand projection?

6 A. (Mr. Peters) I wasn't involved in the
7 writing of that document. I don't know.

8 Q. Will Illinois Power accept a marketer
9 firm product as a designated network resource for
10 acquiring Network Integrated Transmission Service?

11 A. (Mr. Peters) Within the boundaries of my
12 experience and understanding, it may qualify if it is
13 sufficiently backed in a chain of contracts that
14 begins with a source generator through the customer
15 load sink on a full path firm basis.

16 Q. Now you say on the basis of your
17 understanding. Is it fair to say that you haven't
18 had personal responsibility for processing an
19 application for Network Integrated Transmission
20 Service and your understanding is based on talking to
21 other personnel in the company?

22 A. (Mr. Peters) I do not work in

1 Transmission Services nor have I ever worked there,
2 so, no, I have not processed those applications.

3 Q. Let's assume for purposes of this
4 question a RES has aggregated about 16 megawatts of
5 load for service to customers in Illinois Power's
6 service territory. In order to obtain approval of an
7 application for Network Integrated Transmission
8 Service, am I correct that the RES must certify a
9 designated capacity backed resource of 16 megawatts
10 plus a 15 percent planning reserve margin?

11 A. (Mr. Peters) No.

12 Q. What would be the correct statement?

13 A. (Mr. Peters) If the RES has purchased a
14 firm resource within the definition of the -- NERC
15 definition of firm energy, as supplied by CILCO in
16 response to Illinois Power's data request, the party
17 that supplied that contract, the seller of that
18 contract to the RES, has the obligation to carry
19 reserves. In that instance the RES only is obligated
20 to designate a resource of 16 megawatts. It's the
21 seller that has the reserve obligation.

22 Q. Okay. Let's say that the RES has found a

1 resource, a 16 megawatt independent power producer,
2 and that the rated capacity of the unit is 16
3 megawatts, and they designate that as the source.
4 Would that be acceptable without a 15 percent
5 planning reserve for purposes of obtaining a Network
6 Integrated Transmission Service?

7 A. (Mr. Peters) If the seller has
8 represented that they are carrying reserves on the
9 transaction, it is my understanding and experience
10 that, yes, it would be.

11 Q. So in that instance the seller, if they
12 owned a 16 megawatt unit, would also have to certify
13 or provide Illinois Power assurances that they had
14 another 15 percent reserve or 2.4 megawatts in
15 addition to that 16 percent rated capacity of the
16 unit.

17 A. (Mr. Peters) I don't know Illinois
18 Power's Transmission Services' exact documentary
19 requirements on that. That does not sound
20 unreasonable.

21 Q. I think in your supplemental testimony
22 today, in response to the NewEnergy testimony, you

1 stated that in some instances the marketer firm might
2 be more valuable than capacity-backed resources.

3 MR. LAKSHMANAN: Can you point to where you're
4 referring to, just so the witness and the record will
5 be clear?

6 Q. Well, in particular, this may not be how
7 it came out in your statement because I realize you
8 were just using this as a guide, but what I'm looking
9 at says, "In fact, we testified to the financial
10 consequences of failing to deliver on a financially
11 firm contract and argued that its value may indeed be
12 greater."

13 A. (Mr. Peters) That sounds right, yes.

14 Q. If that's the case, my question is why
15 won't Illinois Power accept marketer firm for
16 purposes of obtaining Network Integration
17 Transmission Service?

18 MR. LAKSHMANAN: Objection on the grounds that
19 that's not what he has testified to. It's a
20 misstatement of what he has said twice already.

21 MR. SEIDEL: I don't think it's a misstatement.
22 Maybe if the witness thinks it's a misstatement, I'm

1 perfectly willing to let him clarify it.

2 EXAMINER JONES: Does the objection still
3 stand?

4 MR. LAKSHMANAN: The witness can answer whether
5 it's a valid representation.

6 EXAMINER JONES: All right. You may answer
7 subject to that.

8 A. (Mr. Peters) I think we have two
9 completely separate issues. The one issue revolves
10 around the value and whether or not there's a value
11 difference between two different contracts which may
12 have different underlying physical delivery
13 characteristics. The issue about whether or not
14 Illinois Power Company is willing to accept marketer
15 firm which has no predesignation of the source to
16 fulfill that contract for use for designated network
17 -- I'm sorry -- for Network Integrated Transmission
18 Service is a reliability issue, and it has a
19 completely different context around long-term
20 planning and the ability to serve load during periods
21 of capacity shortfalls. It's two completely separate
22 issues.

1 Q. I think you indicated that Illinois Power
2 might allow a marketer firm to satisfy an application
3 for Network Integrated Transmission Service if they
4 can point to the source and sink of a particular
5 unit. Is that correct?

6 A. (Mr. Peters) If they can point to the
7 entire contractual path, including transmission and
8 generation to the sink, and that full contractual
9 path is of a firm nature, it is my understanding that
10 in that instance it may qualify as a designated
11 resource.

12 Q. And, if you know, recognizing you may not
13 be familiar with this, but Commonwealth Edison does
14 not have a similar requirement of designating a
15 source to sink in order to obtain Network Integrated
16 Transmission Service with a marketer firm contract.

17 A. (Mr. Peters) On an initial application I
18 believe that's true.

19 Q. In the particular situation that was
20 described in the surrebuttal testimony of the CILCO
21 witness Ms. Lancaster, she identified an agreement
22 with Ameren Services that was entered into to serve

1 customers in Illinois Power's service territory. Are
2 you familiar with that testimony?

3 A. (Mr. Peters) Yes, I am.

4 Q. Or does that strike a familiar cord? In
5 that case is it your contention that Ameren is
6 supplying the planning reserves for that particular
7 transaction?

8 MR. LAKSHMANAN: I'm going to object. We've
9 already asked for a copy of that contract. We're not
10 aware of the exact terms of it, but we have asked for
11 it. I mean if the witness knows based on the
12 testimony that's out there, that's fine, but I mean
13 we have asked for a copy of that contract to try to
14 understand better what is in it.

15 MR. SEIDEL: Well, that's Mr. Lakshmanan's
16 deficit in understanding. I was merely asking if the
17 witness had the same deficit in understanding.

18 EXAMINER JONES: All right. You may answer, if
19 you know.

20 A. (Mr. Peters) To the extent that the
21 characterization of the contract here is sufficient
22 to represent the contract itself, my understanding of

1 what was presented here is that CILCO purchased firm
2 load using the NERC definition from Ameren Energy.
3 The NERC definition of firm load is the seller of
4 that contract that is required to hold the reserves.

5 Q. And the seller in that instance was
6 Ameren.

7 A. (Mr. Peters) According to this testimony,
8 it's Ameren Energy.

9 Q. Wouldn't you expect the cost that Ameren
10 is charging to reflect the cost of maintaining those
11 reserves?

12 A. (Mr. Peters) That wouldn't be outside the
13 realm of possibility, yes.

14 MR. SEIDEL: That's all the questions we had.

15 EXAMINER JONES: Thank you, Mr. Seidel.

16 I don't believe anybody else had
17 cross-examination questions for this witness. Do
18 other parties have any cross-examination questions?
19 They do not.

20 Is there redirect?

21 MR. LAKSHMANAN: If I could just have a few
22 minutes, I think we could limit it down to possibly

1 very few if maybe even hopefully none.

2 EXAMINER JONES: Do you need five minutes?

3 MR. LAKSHMANAN: Yes, five minutes would be
4 wonderful.

5 EXAMINER JONES: We'll take five minutes.

6 (Whereupon a short recess was
7 taken.)

8 EXAMINER JONES: All right. Back on the
9 record.

10 It's my understanding IP has some
11 redirect. Is that right, Mr. Lakshmanan?

12 MR. LAKSHMANAN: That's correct. We just have
13 a couple of questions here.

14 REDIRECT EXAMINATION

15 BY MR. LAKSHMANAN:

16 Q. Mr. Jones, in response to a discussion as
17 to the demand that was leaving or that had taken
18 choice, do you recall that conversation?

19 A. (Mr. Jones) Yes.

20 Q. And do you recall that you used the
21 number 400 in response?

22 A. (Mr. Jones) Yes.

1 hearing is concluded, and we will resume at 9:30 in
2 the morning. Thank you.

3 (Whereupon the case was continued
4 to October 3, 2000, at 9:30 a.m. in
5 Springfield, Illinois.)
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1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)

3 CASE NO.: 00-0259, 00-0395 & 00-0461 CONSOLIDATED

4 TITLE: COMMONWEALTH EDISON COMPANY

5 CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
 UNION ELECTRIC COMPANY
6
 ILLINOIS POWER COMPANY
7
8

9 CERTIFICATE OF REPORTER

10 We, Carla J. Boehl and Cheryl A. Davis, do
11 hereby certify that we are court reporters contracted
12 by Sullivan Reporting Company of Chicago, Illinois;
13 that we reported in shorthand the evidence taken and
14 proceedings had on the hearing on the above-entitled
15 case on the 2nd day of October, 2000; that the
16 foregoing 269 pages are a true and correct transcript
17 of my shorthand notes so taken as aforesaid and
18 contain all of the proceedings directed by the
19 Commission or other persons authorized by it to
20 conduct the said hearing to be so stenographically
21 reported.

22 Dated at Springfield, Illinois, on this 4th day
 of October, A.D., 2000.

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